

DODD-FRANK CONFERENCE REPORT

[H.R. 4173]

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Dodd-Frank Wall Street Reform and Consumer Protec-
4 tion Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

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- Sec. 1431. Definitions relating to high-cost mortgages.
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Subtitle D—Office of Housing Counseling

- Sec. 1441. Short title.
- Sec. 1442. Establishment of Office of Housing Counseling.
- Sec. 1443. Counseling procedures.
- Sec. 1444. Grants for housing counseling assistance.
- Sec. 1445. Requirements to use HUD-certified counselors under HUD programs.
- Sec. 1446. Study of defaults and foreclosures.
- Sec. 1447. Default and foreclosure database.
- Sec. 1448. Definitions for counseling-related programs.
- Sec. 1449. Accountability and transparency for grant recipients.
- Sec. 1450. Updating and simplification of mortgage information booklet.
- Sec. 1451. Home inspection counseling.
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Subtitle E—Mortgage Servicing

- Sec. 1461. Escrow and impound accounts relating to certain consumer credit transactions.
- Sec. 1462. Disclosure notice required for consumers who waive escrow services.
- Sec. 1463. Real Estate Settlement Procedures Act of 1974 amendments.
- Sec. 1464. Truth in Lending Act amendments.
- Sec. 1465. Escrows included in repayment analysis.

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Subtitle F—Appraisal Activities

- Sec. 1471. Property appraisal requirements.
- Sec. 1472. Appraisal independence requirements.
- Sec. 1473. Amendments relating to Appraisal Subcommittee of FFIEC, Appraiser Independence Monitoring, Approved Appraiser Education, Appraisal Management Companies, Appraiser Complaint Hotline, Automated Valuation Models, and Broker Price Opinions.
- Sec. 1474. Equal Credit Opportunity Act amendment.
- Sec. 1475. Real Estate Settlement Procedures Act of 1974 amendment relating to certain appraisal fees.
- Sec. 1476. GAO study on the effectiveness and impact of various appraisal methods, valuation models and distributions channels, and on the Home Valuation Code of conduct and the Appraisal Subcommittee.

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- Sec. 1481. Multifamily mortgage resolution program.
- Sec. 1482. Home Affordable Modification Program guidelines.
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- Sec. 1491. Sense of Congress regarding the importance of government-sponsored enterprises reform to enhance the protection, limitation, and regulation of the terms of residential mortgage credit.
- Sec. 1492. GAO study report on government efforts to combat mortgage foreclosure rescue scams and loan modification fraud.
- Sec. 1493. Reporting of mortgage data by State.
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TITLE XV—MISCELLANEOUS PROVISIONS

- Sec. 1501. Restrictions on use of United States funds for foreign governments; protection of American taxpayers.
- Sec. 1502. Conflict minerals.
- Sec. 1503. Reporting requirements regarding coal or other mine safety.
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TITLE XVI—FINANCIAL CRISIS ASSESSMENT AND FUND

- Sec. 1601. Financial crisis special assessment.
- Sec. 1602. Financial Crisis Special Assessment Fund.
- Sec. 1603. Certain swaps, etc., not treated as section 1256 contracts.

1 **SEC. 2. DEFINITIONS.**

2 As used in this Act, the following definitions shall
3 apply, except as the context otherwise requires or as other-
4 wise specifically provided in this Act:

5 (1) **AFFILIATE.**—The term “affiliate” means
6 any company that controls, is controlled by, or is
7 under common control with another company.

8 (2) **APPROPRIATE FEDERAL BANKING AGEN-**
9 **CY.**—On and after the transfer date, the term “ap-
10 propriate Federal banking agency” has the same
11 meaning as in section 3(q) of the Federal Deposit
12 Insurance Act (12 U.S.C. 1813(q)), as amended by
13 title III.

14 (3) **BOARD OF GOVERNORS.**—The term “Board
15 of Governors” means the Board of Governors of the
16 Federal Reserve System.

17 (4) **BUREAU.**—The term “Bureau” means the
18 Bureau of Consumer Financial Protection estab-
19 lished under title X.

20 (5) **COMMISSION.**—The term “Commission”
21 means the Securities and Exchange Commission, ex-
22 cept in the context of the Commodity Futures Trad-
23 ing Commission.

24 (6) **COMMODITY FUTURES TERMS.**—The terms
25 “futures commission merchant”, “swap”, “swap
26 dealer”, “swap execution facility”, “derivatives clear-

1 ing organization”, “board of trade”, “commodity
2 trading advisor”, “commodity pool”, and “com-
3 modity pool operator” have the same meanings as
4 given the terms in section 1a of the Commodity Ex-
5 change Act (7 U.S.C. 1 et seq.).

6 (7) CORPORATION.—The term “Corporation”
7 means the Federal Deposit Insurance Corporation.

8 (8) COUNCIL.—The term “Council” means the
9 Financial Stability Oversight Council established
10 under title I.

11 (9) CREDIT UNION.—The term “credit union”
12 means a Federal credit union, State credit union, or
13 State-chartered credit union, as those terms are de-
14 fined in section 101 of the Federal Credit Union Act
15 (12 U.S.C. 1752).

16 (10) FEDERAL BANKING AGENCY.—The term—

17 (A) “Federal banking agency” means, indi-
18 vidually, the Board of Governors, the Office of
19 the Comptroller of the Currency, and the Cor-
20 poration; and

21 (B) “Federal banking agencies” means all
22 of the agencies referred to in subparagraph (A),
23 collectively.

24 (11) FUNCTIONALLY REGULATED SUB-
25 SIDIARY.—The term “functionally regulated sub-

1 subsidiary” has the same meaning as in section 5(c)(5)
2 of the Bank Holding Company Act of 1956 (12
3 U.S.C. 1844(c)(5)).

4 (12) PRIMARY FINANCIAL REGULATORY AGEN-
5 CY.—The term “primary financial regulatory agen-
6 cy” means—

7 (A) the appropriate Federal banking agen-
8 cy, with respect to institutions described in sec-
9 tion 3(q) of the Federal Deposit Insurance Act,
10 except to the extent that an institution is or the
11 activities of an institution are otherwise de-
12 scribed in subparagraph (B), (C), (D), or (E);

13 (B) the Securities and Exchange Commis-
14 sion, with respect to—

15 (i) any broker or dealer that is reg-
16 istered with the Commission under the Se-
17 curities Exchange Act of 1934, with re-
18 spect to the activities of the broker or deal-
19 er that require the broker or dealer to be
20 registered under that Act;

21 (ii) any investment company that is
22 registered with the Commission under the
23 Investment Company Act of 1940, with re-
24 spect to the activities of the investment

1 company that require the investment com-
2 pany to be registered under that Act;

3 (iii) any investment adviser that is
4 registered with the Commission under the
5 Investment Advisers Act of 1940, with re-
6 spect to the investment advisory activities
7 of such company and activities that are in-
8 cidental to such advisory activities;

9 (iv) any clearing agency registered
10 with the Commission under the Securities
11 Exchange Act of 1934, with respect to the
12 activities of the clearing agency that re-
13 quire the agency to be registered under
14 such Act;

15 (v) any nationally recognized statis-
16 tical rating organization registered with
17 the Commission under the Securities Ex-
18 change Act of 1934;

19 (vi) any transfer agent registered with
20 the Commission under the Securities Ex-
21 change Act of 1934;

22 (vii) any exchange registered as a na-
23 tional securities exchange with the Com-
24 mission under the Securities Exchange Act
25 of 1934;

1 (viii) any national securities associa-
2 tion registered with the Commission under
3 the Securities Exchange Act of 1934;

4 (ix) any securities information proc-
5 essor registered with the Commission
6 under the Securities Exchange Act of
7 1934;

8 (x) the Municipal Securities Rule-
9 making Board established under the Secu-
10 rities Exchange Act of 1934;

11 (xi) the Public Company Accounting
12 Oversight Board established under the
13 Sarbanes-Oxley Act of 2002 (15 U.S.C.
14 7211 et seq.);

15 (xii) the Securities Investor Protection
16 Corporation established under the Securi-
17 ties Investor Protection Act of 1970 (15
18 U.S.C. 78aaa et seq.); and

19 (xiii) any security-based swap execu-
20 tion facility, security-based swap data re-
21 pository, security-based swap dealer or
22 major security-based swap participant reg-
23 istered with the Commission under the Se-
24 curities Exchange Act of 1934, with re-
25 spect to the security-based swap activities

1 of the person that require such person to
2 be registered under such Act;

3 (C) the Commodity Futures Trading Com-
4 mission, with respect to—

5 (i) any futures commission merchant
6 registered with the Commodity Futures
7 Trading Commission under the Commodity
8 Exchange Act (7 U.S.C. 1 et seq.), with
9 respect to the activities of the futures com-
10 mission merchant that requires the futures
11 commission merchant to be registered
12 under that Act;

13 (ii) any commodity pool operator reg-
14 istered with the Commodity Futures Trad-
15 ing Commission under the Commodity Ex-
16 change Act (7 U.S.C. 1 et seq.), with re-
17 spect to the activities of the commodity
18 pool operator that requires the commodity
19 pool operator to be registered under that
20 Act, or a commodity pool, as defined in
21 that Act;

22 (iii) any commodity trading advisor or
23 introducing broker registered with the
24 Commodity Futures Trading Commission
25 under the Commodity Exchange Act (7

1 U.S.C. 1 et seq.), with respect to the ac-
2 tivities of the commodity trading advisor or
3 introducing broker that require the com-
4modity trading adviser or introducing
5 broker to be registered under that Act;

6 (iv) any derivatives clearing organiza-
7 tion registered with the Commodity Fu-
8tures Trading Commission under the Com-
9modity Exchange Act (7 U.S.C. 1 et seq.),
10 with respect to the activities of the deriva-
11tives clearing organization that require the
12 derivatives clearing organization to be reg-
13istered under that Act;

14 (v) any board of trade designated as
15 a contract market by the Commodity Fu-
16tures Trading Commission under the Com-
17modity Exchange Act (7 U.S.C. 1 et seq.);

18 (vi) any futures association registered
19 with the Commodity Futures Trading
20 Commission under the Commodity Ex-
21change Act (7 U.S.C. 1 et seq.);

22 (vii) any retail foreign exchange dealer
23 registered with the Commodity Futures
24 Trading Commission under the Commodity
25 Exchange Act (7 U.S.C. 1 et seq.), with

1 respect to the activities of the retail foreign
2 exchange dealer that require the retail for-
3 eign exchange dealer to be registered under
4 that Act;

5 (viii) any swap execution facility, swap
6 data repository, swap dealer, or major
7 swap participant registered with the Com-
8 modity Futures Trading Commission
9 under the Commodity Exchange Act (7
10 U.S.C. 1 et seq.) with respect to the swap
11 activities of the person that requires such
12 person to be registered under that Act; and

13 (ix) any registered entity under the
14 Commodity Exchange Act (7 U.S.C. 1 et
15 seq.), with respect to the activities of the
16 registered entity that require the registered
17 entity to be registered under that Act;

18 (D) the State insurance authority of the
19 State in which an insurance company is domi-
20 ciled, with respect to the insurance activities
21 and activities that are incidental to such insur-
22 ance activities of an insurance company that is
23 subject to supervision by the State insurance
24 authority under State insurance law; and

1 (E) the Federal Housing Finance Agency,
2 with respect to Federal Home Loan Banks or
3 the Federal Home Loan Bank System, and
4 with respect to the Federal National Mortgage
5 Association or the Federal Home Loan Mort-
6 gage Corporation.

7 (13) PRUDENTIAL STANDARDS.—The term
8 “prudential standards” means enhanced supervision
9 and regulatory standards developed by the Board of
10 Governors under section 115 or 165.

11 (14) SECRETARY.—The term “Secretary”
12 means the Secretary of the Treasury.

13 (15) SECURITIES TERMS.—The—

14 (A) terms “broker”, “dealer”, “issuer”,
15 “nationally recognized statistical ratings organi-
16 zation”, “security”, and “securities laws” have
17 the same meanings as in section 3 of the Secu-
18 rities Exchange Act of 1934 (15 U.S.C. 78c);

19 (B) term “investment adviser” has the
20 same meaning as in section 202 of the Invest-
21 ment Advisers Act of 1940 (15 U.S.C. 80b–2);
22 and

23 (C) term “investment company” has the
24 same meaning as in section 3 of the Investment
25 Company Act of 1940 (15 U.S.C. 80a–3).

1 (16) STATE.—The term “State” means any
2 State, commonwealth, territory, or possession of the
3 United States, the District of Columbia, the Com-
4 monwealth of Puerto Rico, the Commonwealth of the
5 Northern Mariana Islands, American Samoa, Guam,
6 or the United States Virgin Islands.

7 (17) TRANSFER DATE.—The term “transfer
8 date” means the date established under section 311.

9 (18) OTHER INCORPORATED DEFINITIONS.—

10 (A) FEDERAL DEPOSIT INSURANCE ACT.—

11 The terms “affiliate”, “bank”, “bank holding
12 company”, “control” (when used with respect to
13 a depository institution), “deposit”, “depository
14 institution”, “Federal depository institution”,
15 “Federal savings association”, “foreign bank”,
16 “including”, “insured branch”, “insured depository
17 institution”, “national member bank”,
18 “national nonmember bank”, “savings associa-
19 tion”, “State bank”, “State depository institu-
20 tion”, “State member bank”, “State non-
21 member bank”, “State savings association”,
22 and “subsidiary” have the same meanings as in
23 section 3 of the Federal Deposit Insurance Act
24 (12 U.S.C. 1813).

25 (B) HOLDING COMPANIES.—The term—

1 (i) “bank holding company” has the
2 same meaning as in section 2 of the Bank
3 Holding Company Act of 1956 (12 U.S.C.
4 1841);

5 (ii) “financial holding company” has
6 the same meaning as in section 2(p) of the
7 Bank Holding Company Act of 1956 (12
8 U.S.C. 1841(p)); and

9 (iii) “savings and loan holding com-
10 pany” has the same meaning as in section
11 10 of the Home Owners’ Loan Act (12
12 U.S.C. 1467a(a)).

13 **SEC. 3. SEVERABILITY.**

14 If any provision of this Act, an amendment made by
15 this Act, or the application of such provision or amend-
16 ment to any person or circumstance is held to be unconsti-
17 tutional, the remainder of this Act, the amendments made
18 by this Act, and the application of the provisions of such
19 to any person or circumstance shall not be affected there-
20 by.

21 **SEC. 4. EFFECTIVE DATE.**

22 Except as otherwise specifically provided in this Act
23 or the amendments made by this Act, this Act and such
24 amendments shall take effect 1 day after the date of en-
25 actment of this Act.

1 **SEC. 5. BUDGETARY EFFECTS.**

2 The budgetary effects of this Act, for the purpose of
3 complying with the Statutory Pay-As-You-Go-Act of 2010,
4 shall be determined by reference to the latest statement
5 titled “Budgetary Effects of PAYGO Legislation” for this
6 Act, jointly submitted for printing in the Congressional
7 Record by the Chairmen of the House and Senate Budget
8 Committees, provided that such statement has been sub-
9 mitted prior to the vote on passage in the House acting
10 first on this conference report or amendment between the
11 Houses.

12 **SEC. 6. ANTITRUST SAVINGS CLAUSE.**

13 Nothing in this Act, or any amendment made by this
14 Act, shall be construed to modify, impair, or supersede
15 the operation of any of the antitrust laws, unless otherwise
16 specified. For purposes of this section, the term “antitrust
17 laws” has the same meaning as in subsection (a) of the
18 first section of the Clayton Act, except that such term in-
19 cludes section 5 of the Federal Trade Commission Act,
20 to the extent that such section 5 applies to unfair methods
21 of competition.

22 **TITLE I—FINANCIAL STABILITY**

23 **SEC. 101. SHORT TITLE.**

24 This title may be cited as the “Financial Stability Act
25 of 2010”.

1 **SEC. 102. DEFINITIONS.**

2 (a) IN GENERAL.—For purposes of this title, unless
3 the context otherwise requires, the following definitions
4 shall apply:

5 (1) BANK HOLDING COMPANY.—The term
6 “bank holding company” has the same meaning as
7 in section 2 of the Bank Holding Company Act of
8 1956 (12 U.S.C. 1841). A foreign bank or company
9 that is treated as a bank holding company for pur-
10 poses of the Bank Holding Company Act of 1956,
11 pursuant to section 8(a) of the International Bank-
12 ing Act of 1978 (12 U.S.C. 3106(a)), shall be treat-
13 ed as a bank holding company for purposes of this
14 title.

15 (2) CHAIRPERSON.—The term “Chairperson”
16 means the Chairperson of the Council.

17 (3) MEMBER AGENCY.—The term “member
18 agency” means an agency represented by a voting
19 member of the Council.

20 (4) NONBANK FINANCIAL COMPANY DEFINI-
21 TIONS.—

22 (A) FOREIGN NONBANK FINANCIAL COM-
23 PANY.—The term “foreign nonbank financial
24 company” means a company (other than a com-
25 pany that is, or is treated in the United States
26 as, a bank holding company) that is—

1 (i) incorporated or organized in a
2 country other than the United States; and
3 (ii) predominantly engaged in, includ-
4 ing through a branch in the United States,
5 financial activities, as defined in paragraph
6 (6).

7 (B) U.S. NONBANK FINANCIAL COM-
8 PANY.—The term “U.S. nonbank financial com-
9 pany” means a company (other than a bank
10 holding company or a Farm Credit System in-
11 stitution chartered and subject to the provisions
12 of the Farm Credit Act of 1971 (12 U.S.C.
13 2001 et seq.), or a national securities exchange
14 (or parent thereof), clearing agency (or parent
15 thereof, unless the parent is a bank holding
16 company), security-based swap execution facil-
17 ity, or security-based swap data repository reg-
18 istered with the Commission, or a board of
19 trade designated as a contract market (or par-
20 ent thereof), or a derivatives clearing organiza-
21 tion (or parent thereof, unless the parent is a
22 bank holding company), swap execution facility
23 or a swap data repository registered with the
24 Commodity Futures Trading Commission), that
25 is—

1 (i) incorporated or organized under
2 the laws of the United States or any State;
3 and

4 (ii) predominantly engaged in finan-
5 cial activities, as defined in paragraph (6).

6 (C) NONBANK FINANCIAL COMPANY.—The
7 term “nonbank financial company” means a
8 U.S. nonbank financial company and a foreign
9 nonbank financial company.

10 (D) NONBANK FINANCIAL COMPANY SU-
11 PERVISED BY THE BOARD OF GOVERNORS.—
12 The term “nonbank financial company super-
13 vised by the Board of Governors” means a
14 nonbank financial company that the Council
15 has determined under section 113 shall be su-
16 pervised by the Board of Governors.

17 (5) OFFICE OF FINANCIAL RESEARCH.—The
18 term “Office of Financial Research” means the of-
19 fice established under section 152.

20 (6) PREDOMINANTLY ENGAGED.—A company is
21 “predominantly engaged in financial activities” if—

22 (A) the annual gross revenues derived by
23 the company and all of its subsidiaries from ac-
24 tivities that are financial in nature (as defined
25 in section 4(k) of the Bank Holding Company

1 Act of 1956) and, if applicable, from the owner-
2 ship or control of one or more insured deposi-
3 tory institutions, represents 85 percent or more
4 of the consolidated annual gross revenues of the
5 company; or

6 (B) the consolidated assets of the company
7 and all of its subsidiaries related to activities
8 that are financial in nature (as defined in sec-
9 tion 4(k) of the Bank Holding Company Act of
10 1956) and, if applicable, related to the owner-
11 ship or control of one or more insured deposi-
12 tory institutions, represents 85 percent or more
13 of the consolidated assets of the company.

14 (7) SIGNIFICANT INSTITUTIONS.—The terms
15 “significant nonbank financial company” and “sig-
16 nificant bank holding company” have the meanings
17 given those terms by rule of the Board of Governors,
18 but in no instance shall the terms include those enti-
19 ties that are excluded under paragraph (4)(B).

20 (b) DEFINITIONAL CRITERIA.—The Board of Gov-
21 ernors shall establish, by regulation, the requirements for
22 determining if a company is predominantly engaged in fi-
23 nancial activities, as defined in subsection (a)(6).

24 (c) FOREIGN NONBANK FINANCIAL COMPANIES.—
25 For purposes of the application of subtitles A and C (other

1 than section 113(b)) with respect to a foreign nonbank
2 financial company, references in this title to “company”
3 or “subsidiary” include only the United States activities
4 and subsidiaries of such foreign company, except as other-
5 wise provided.

6 **Subtitle A—Financial Stability**
7 **Oversight Council**

8 SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ES-
9 TABLISHED.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

13 (b) MEMBERSHIP.—The Council shall consist of the
14 following members:

15 (1) VOTING MEMBERS.—The voting members,
16 who shall each have 1 vote on the Council shall be—

17 (A) the Secretary of the Treasury, who
18 shall serve as Chairperson of the Council;

19 (B) the Chairman of the Board of Gov-
20 ernors;

21 (C) the Comptroller of the Currency;

22 (D) the Director of the Bureau;

23 (E) the Chairman of the Commission;

24 (F) the Chairperson of the Corporation;

1 (G) the Chairperson of the Commodity Fu-
2 tures Trading Commission;

3 (H) the Director of the Federal Housing
4 Finance Agency;

5 (I) the Chairman of the National Credit
6 Union Administration Board; and

7 (J) an independent member appointed by
8 the President, by and with the advice and con-
9 sent of the Senate, having insurance expertise.

10 (2) NONVOTING MEMBERS.—The nonvoting
11 members, who shall serve in an advisory capacity as
12 a nonvoting member of the Council, shall be—

13 (A) the Director of the Office of Financial
14 Research;

15 (B) the Director of the Federal Insurance
16 Office;

17 (C) a State insurance commissioner, to be
18 designated by a selection process determined by
19 the State insurance commissioners;

20 (D) a State banking supervisor, to be des-
21 ignated by a selection process determined by
22 the State banking supervisors; and

23 (E) a State securities commissioner (or an
24 officer performing like functions), to be des-

1 ignated by a selection process determined by
2 such State securities commissioners.

3 (3) NONVOTING MEMBER PARTICIPATION.—The
4 nonvoting members of the Council shall not be ex-
5 cluded from any of the proceedings, meetings, dis-
6 cussions, or deliberations of the Council, except that
7 the Chairperson may, upon an affirmative vote of
8 the member agencies, exclude the nonvoting mem-
9 bers from any of the proceedings, meetings, discus-
10 sions, or deliberations of the Council, when nec-
11 essary to safeguard and promote the free exchange
12 of confidential supervisory information.

13 (c) TERMS; VACANCY.—

14 (1) TERMS.—The independent member of the
15 Council shall serve for a term of 6 years, and each
16 nonvoting member described in subparagraphs (C),
17 (D), and (E) of subsection (b)(2) shall serve for a
18 term of 2 years.

19 (2) VACANCY.—Any vacancy on the Council
20 shall be filled in the manner in which the original
21 appointment was made.

22 (3) ACTING OFFICIALS MAY SERVE.—In the
23 event of a vacancy in the office of the head of a
24 member agency or department, and pending the ap-
25 pointment of a successor, or during the absence or

1 disability of the head of a member agency or depart-
2 ment, the acting head of the member agency or de-
3 partment shall serve as a member of the Council in
4 the place of that agency or department head.

5 (d) TECHNICAL AND PROFESSIONAL ADVISORY COM-
6 MITTEES.—The Council may appoint such special advi-
7 sory, technical, or professional committees as may be use-
8 ful in carrying out the functions of the Council, including
9 an advisory committee consisting of State regulators, and
10 the members of such committees may be members of the
11 Council, or other persons, or both.

12 (e) MEETINGS.—

13 (1) TIMING.—The Council shall meet at the call
14 of the Chairperson or a majority of the members
15 then serving, but not less frequently than quarterly.

16 (2) RULES FOR CONDUCTING BUSINESS.—The
17 Council shall adopt such rules as may be necessary
18 for the conduct of the business of the Council. Such
19 rules shall be rules of agency organization, proce-
20 dure, or practice for purposes of section 553 of title
21 5, United States Code.

22 (f) VOTING.—Unless otherwise specified, the Council
23 shall make all decisions that it is authorized or required
24 to make by a majority vote of the voting members then
25 serving.

1 (g) NONAPPLICABILITY OF FACA.—The Federal Ad-
2 visory Committee Act (5 U.S.C. App.) shall not apply to
3 the Council, or to any special advisory, technical, or pro-
4 fessional committee appointed by the Council, except that,
5 if an advisory, technical, or professional committee has
6 one or more members who are not employees of or affili-
7 ated with the United States Government, the Council shall
8 publish a list of the names of the members of such com-
9 mittee.

10 (h) ASSISTANCE FROM FEDERAL AGENCIES.—Any
11 department or agency of the United States may provide
12 to the Council and any special advisory, technical, or pro-
13 fessional committee appointed by the Council, such serv-
14 ices, funds, facilities, staff, and other support services as
15 the Council may determine advisable.

16 (i) COMPENSATION OF MEMBERS.—

17 (1) FEDERAL EMPLOYEE MEMBERS.—All mem-
18 bers of the Council who are officers or employees of
19 the United States shall serve without compensation
20 in addition to that received for their services as offi-
21 cers or employees of the United States.

22 (2) COMPENSATION FOR NON-FEDERAL MEM-
23 BER.—Section 5314 of title 5, United States Code,
24 is amended by adding at the end the following:

1 “Independent Member of the Financial Stability
2 Oversight Council (1).”.

3 (j) DETAIL OF GOVERNMENT EMPLOYEES.—Any em-
4 ployee of the Federal Government may be detailed to the
5 Council without reimbursement, and such detail shall be
6 without interruption or loss of civil service status or privi-
7 lege. An employee of the Federal Government detailed to
8 the Council shall report to and be subject to oversight by
9 the Council during the assignment to the Council, and
10 shall be compensated by the department or agency from
11 which the employee was detailed.

12 **SEC. 112. COUNCIL AUTHORITY.**

13 (a) PURPOSES AND DUTIES OF THE COUNCIL.—

14 (1) IN GENERAL.—The purposes of the Council
15 are—

16 (A) to identify risks to the financial sta-
17 bility of the United States that could arise from
18 the material financial distress or failure, or on-
19 going activities, of large, interconnected bank
20 holding companies or nonbank financial compa-
21 nies, or that could arise outside the financial
22 services marketplace;

23 (B) to promote market discipline, by elimi-
24 nating expectations on the part of shareholders,
25 creditors, and counterparties of such companies

1 that the Government will shield them from
2 losses in the event of failure; and

3 (C) to respond to emerging threats to the
4 stability of the United States financial system.

5 (2) DUTIES.—The Council shall, in accordance
6 with this title—

7 (A) collect information from member agen-
8 cies, other Federal and State financial regu-
9 latory agencies, the Federal Insurance Office
10 and, if necessary to assess risks to the United
11 States financial system, direct the Office of Fi-
12 nancial Research to collect information from
13 bank holding companies and nonbank financial
14 companies;

15 (B) provide direction to, and request data
16 and analyses from, the Office of Financial Re-
17 search to support the work of the Council;

18 (C) monitor the financial services market-
19 place in order to identify potential threats to
20 the financial stability of the United States;

21 (D) to monitor domestic and international
22 financial regulatory proposals and develop-
23 ments, including insurance and accounting
24 issues, and to advise Congress and make rec-
25 ommendations in such areas that will enhance

1 the integrity, efficiency, competitiveness, and
2 stability of the U.S. financial markets;

3 (E) facilitate information sharing and co-
4 ordination among the member agencies and
5 other Federal and State agencies regarding do-
6 mestic financial services policy development,
7 rulemaking, examinations, reporting require-
8 ments, and enforcement actions;

9 (F) recommend to the member agencies
10 general supervisory priorities and principles re-
11 flecting the outcome of discussions among the
12 member agencies;

13 (G) identify gaps in regulation that could
14 pose risks to the financial stability of the
15 United States;

16 (H) require supervision by the Board of
17 Governors for nonbank financial companies that
18 may pose risks to the financial stability of the
19 United States in the event of their material fi-
20 nancial distress or failure, pursuant to section
21 113;

22 (I) make recommendations to the Board of
23 Governors concerning the establishment of
24 heightened prudential standards for risk-based
25 capital, leverage, liquidity, contingent capital,

1 resolution plans and credit exposure reports,
2 concentration limits, enhanced public disclo-
3 sures, and overall risk management for
4 nonbank financial companies and large, inter-
5 connected bank holding companies supervised
6 by the Board of Governors;

7 (J) identify systemically important finan-
8 cial market utilities and payment, clearing, and
9 settlement activities (as that term is defined in
10 title VIII);

11 (K) make recommendations to primary fi-
12 nancial regulatory agencies to apply new or
13 heightened standards and safeguards for finan-
14 cial activities or practices that could create or
15 increase risks of significant liquidity, credit, or
16 other problems spreading among bank holding
17 companies, nonbank financial companies, and
18 United States financial markets;

19 (L) review and, as appropriate, may sub-
20 mit comments to the Commission and any
21 standard-setting body with respect to an exist-
22 ing or proposed accounting principle, standard,
23 or procedure;

24 (M) provide a forum for—

1 (i) discussion and analysis of emerg-
2 ing market developments and financial reg-
3 ulatory issues; and

4 (ii) resolution of jurisdictional dis-
5 putes among the members of the Council;
6 and

7 (N) annually report to and testify before
8 Congress on—

9 (i) the activities of the Council;

10 (ii) significant financial market and
11 regulatory developments, including insur-
12 ance and accounting regulations and
13 standards, along with an assessment of
14 those developments on the stability of the
15 financial system;

16 (iii) potential emerging threats to the
17 financial stability of the United States;

18 (iv) all determinations made under
19 section 113 or title VIII, and the basis for
20 such determinations;

21 (v) all recommendations made under
22 section 119 and the result of such rec-
23 ommendations; and

24 (vi) recommendations—

1 (I) to enhance the integrity, effi-
2 ciency, competitiveness, and stability
3 of United States financial markets;
4 (II) to promote market discipline;
5 and
6 (III) to maintain investor con-
7 fidence.

8 (b) STATEMENTS BY VOTING MEMBERS OF THE
9 COUNCIL.—At the time at which each report is submitted
10 under subsection (a), each voting member of the Council
11 shall—

12 (1) if such member believes that the Council,
13 the Government, and the private sector are taking
14 all reasonable steps to ensure financial stability and
15 to mitigate systemic risk that would negatively affect
16 the economy, submit a signed statement to Congress
17 stating such belief; or

18 (2) if such member does not believe that all rea-
19 sonable steps described under paragraph (1) are
20 being taken, submit a signed statement to Congress
21 stating what actions such member believes need to
22 be taken in order to ensure that all reasonable steps
23 described under paragraph (1) are taken.

24 (c) TESTIMONY BY THE CHAIRPERSON.—The Chair-
25 person shall appear before the Committee on Financial

1 Services of the House of Representatives and the Com-
2 mittee on Banking, Housing, and Urban Affairs of the
3 Senate at an annual hearing, after the report is submitted
4 under subsection (a)—

5 (1) to discuss the efforts, activities, objectives,
6 and plans of the Council; and

7 (2) to discuss and answer questions concerning
8 such report.

9 (d) AUTHORITY TO OBTAIN INFORMATION.—

10 (1) IN GENERAL.—The Council may receive,
11 and may request the submission of, any data or in-
12 formation from the Office of Financial Research,
13 member agencies, and the Federal Insurance Office,
14 as necessary—

15 (A) to monitor the financial services mar-
16 ketplace to identify potential risks to the finan-
17 cial stability of the United States; or

18 (B) to otherwise carry out any of the pro-
19 visions of this title.

20 (2) SUBMISSIONS BY THE OFFICE AND MEMBER
21 AGENCIES.—Notwithstanding any other provision of
22 law, the Office of Financial Research, any member
23 agency, and the Federal Insurance Office, are au-
24 thorized to submit information to the Council.

25 (3) FINANCIAL DATA COLLECTION.—

1 (A) IN GENERAL.—The Council, acting
2 through the Office of Financial Research, may
3 require the submission of periodic and other re-
4 ports from any nonbank financial company or
5 bank holding company for the purpose of as-
6 sessing the extent to which a financial activity
7 or financial market in which the nonbank finan-
8 cial company or bank holding company partici-
9 pates, or the nonbank financial company or
10 bank holding company itself, poses a threat to
11 the financial stability of the United States.

12 (B) MITIGATION OF REPORT BURDEN.—
13 Before requiring the submission of reports from
14 any nonbank financial company or bank holding
15 company that is regulated by a member agency
16 or any primary financial regulatory agency, the
17 Council, acting through the Office of Financial
18 Research, shall coordinate with such agencies
19 and shall, whenever possible, rely on informa-
20 tion available from the Office of Financial Re-
21 search or such agencies.

22 (C) MITIGATION IN CASE OF FOREIGN FI-
23 NANCIAL COMPANIES.—Before requiring the
24 submission of reports from a company that is
25 a foreign nonbank financial company or foreign-

1 based bank holding company, the Council shall,
2 acting through the Office of Financial Re-
3 search, to the extent appropriate, consult with
4 the appropriate foreign regulator of such com-
5 pany and, whenever possible, rely on informa-
6 tion already being collected by such foreign reg-
7 ulator, with English translation.

8 (4) BACK-UP EXAMINATION BY THE BOARD OF
9 GOVERNORS.—If the Council is unable to determine
10 whether the financial activities of a U.S. nonbank fi-
11 nancial company pose a threat to the financial sta-
12 bility of the United States, based on information or
13 reports obtained under paragraphs (1) and (3), dis-
14 cussions with management, and publicly available in-
15 formation, the Council may request the Board of
16 Governors, and the Board of Governors is author-
17 ized, to conduct an examination of the U.S. nonbank
18 financial company for the sole purpose of deter-
19 mining whether the nonbank financial company
20 should be supervised by the Board of Governors for
21 purposes of this title.

22 (5) CONFIDENTIALITY.—

23 (A) IN GENERAL.—The Council, the Office
24 of Financial Research, and the other member
25 agencies shall maintain the confidentiality of

1 any data, information, and reports submitted
2 under this title.

3 (B) RETENTION OF PRIVILEGE.—The sub-
4 mission of any nonpublicly available data or in-
5 formation under this subsection and subtitle B
6 shall not constitute a waiver of, or otherwise af-
7 fect, any privilege arising under Federal or
8 State law (including the rules of any Federal or
9 State court) to which the data or information is
10 otherwise subject.

11 (C) FREEDOM OF INFORMATION ACT.—
12 Section 552 of title 5, United States Code, in-
13 cluding the exceptions thereunder, shall apply
14 to any data or information submitted under this
15 subsection and subtitle B.

16 **SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REG-**
17 **ULATION OF CERTAIN NONBANK FINANCIAL**
18 **COMPANIES.**

19 (a) U.S. NONBANK FINANCIAL COMPANIES SUPER-
20 VISED BY THE BOARD OF GOVERNORS.—

21 (1) DETERMINATION.—The Council, on a non-
22 delegable basis and by a vote of not fewer than $\frac{2}{3}$
23 of the voting members then serving, including an af-
24 firmative vote by the Chairperson, may determine
25 that a U.S. nonbank financial company shall be su-

1 supervised by the Board of Governors and shall be
2 subject to prudential standards, in accordance with
3 this title, if the Council determines that material fi-
4 nancial distress at the U.S. nonbank financial com-
5 pany, or the nature, scope, size, scale, concentration,
6 interconnectedness, or mix of the activities of the
7 U.S. nonbank financial company, could pose a threat
8 to the financial stability of the United States.

9 (2) CONSIDERATIONS.—In making a determina-
10 tion under paragraph (1), the Council shall con-
11 sider—

12 (A) the extent of the leverage of the com-
13 pany;

14 (B) the extent and nature of the off-bal-
15 ance-sheet exposures of the company;

16 (C) the extent and nature of the trans-
17 actions and relationships of the company with
18 other significant nonbank financial companies
19 and significant bank holding companies;

20 (D) the importance of the company as a
21 source of credit for households, businesses, and
22 State and local governments and as a source of
23 liquidity for the United States financial system;

24 (E) the importance of the company as a
25 source of credit for low-income, minority, or un-

1 derserved communities, and the impact that the
2 failure of such company would have on the
3 availability of credit in such communities;

4 (F) the extent to which assets are man-
5 aged rather than owned by the company, and
6 the extent to which ownership of assets under
7 management is diffuse;

8 (G) the nature, scope, size, scale, con-
9 centration, interconnectedness, and mix of the
10 activities of the company;

11 (H) the degree to which the company is al-
12 ready regulated by 1 or more primary financial
13 regulatory agencies;

14 (I) the amount and nature of the financial
15 assets of the company;

16 (J) the amount and types of the liabilities
17 of the company, including the degree of reliance
18 on short-term funding; and

19 (K) any other risk-related factors that the
20 Council deems appropriate.

21 (b) FOREIGN NONBANK FINANCIAL COMPANIES SU-
22 PERVISED BY THE BOARD OF GOVERNORS.—

23 (1) DETERMINATION.—The Council, on a non-
24 delegable basis and by a vote of not fewer than $\frac{2}{3}$
25 of the voting members then serving, including an af-

1 firmative vote by the Chairperson, may determine
2 that a foreign nonbank financial company shall be
3 supervised by the Board of Governors and shall be
4 subject to prudential standards, in accordance with
5 this title, if the Council determines that material fi-
6 nancial distress at the foreign nonbank financial
7 company, or the nature, scope, size, scale, concentra-
8 tion, interconnectedness, or mix of the activities of
9 the foreign nonbank financial company, could pose a
10 threat to the financial stability of the United States.

11 (2) CONSIDERATIONS.—In making a determina-
12 tion under paragraph (1), the Council shall con-
13 sider—

14 (A) the extent of the leverage of the com-
15 pany;

16 (B) the extent and nature of the United
17 States related off-balance-sheet exposures of the
18 company;

19 (C) the extent and nature of the trans-
20 actions and relationships of the company with
21 other significant nonbank financial companies
22 and significant bank holding companies;

23 (D) the importance of the company as a
24 source of credit for United States households,
25 businesses, and State and local governments

1 and as a source of liquidity for the United
2 States financial system;

3 (E) the importance of the company as a
4 source of credit for low-income, minority, or un-
5 derserved communities in the United States,
6 and the impact that the failure of such com-
7 pany would have on the availability of credit in
8 such communities;

9 (F) the extent to which assets are man-
10 aged rather than owned by the company and
11 the extent to which ownership of assets under
12 management is diffuse;

13 (G) the nature, scope, size, scale, con-
14 centration, interconnectedness, and mix of the
15 activities of the company;

16 (H) the extent to which the company is
17 subject to prudential standards on a consoli-
18 dated basis in the home country of such foreign
19 financial parent that are administered and en-
20 forced by a comparable foreign supervisory au-
21 thority;

22 (I) the amount and nature of the United
23 States financial assets of the company;

24 (J) the amount and nature of the liabilities
25 of the company used to fund activities and op-

1 erations in the United States, including the de-
2 gree of reliance on short-term funding; and

3 (K) any other risk-related factors that the
4 Council deems appropriate.

5 (c) ANTIEVASION.—

6 (1) DETERMINATIONS.—In order to avoid eva-
7 sion of this title, the Council, on its own initiative
8 or at the request of the Board of Governors, may de-
9 termine, on a nondelegable basis and by a vote of
10 not fewer than $\frac{2}{3}$ of the voting members then serv-
11 ing, including an affirmative vote by the Chair-
12 person, that—

13 (A) material financial distress related to,
14 or the nature, scope, size, scale, concentration,
15 interconnectedness, or mix of, the financial ac-
16 tivities conducted directly or indirectly by a
17 company incorporated or organized under the
18 laws of the United States or any State or the
19 financial activities in the United States of a
20 company incorporated or organized in a country
21 other than the United States would pose a
22 threat to the financial stability of the United
23 States, based on consideration of the factors in
24 subsection (a)(2) or (b)(2), as applicable;

1 (B) the company is organized or operates
2 in such a manner as to evade the application of
3 this title; and

4 (C) such financial activities of the company
5 shall be supervised by the Board of Governors
6 and subject to prudential standards in accord-
7 ance with this title, consistent with paragraph
8 (3).

9 (2) REPORT.—Upon making a determination
10 under paragraph (1), the Council shall submit a re-
11 port to the appropriate committees of Congress de-
12 tailing the reasons for making such determination.

13 (3) CONSOLIDATED SUPERVISION OF ONLY FI-
14 NANCIAL ACTIVITIES; ESTABLISHMENT OF AN IN-
15 TERMEDIATE HOLDING COMPANY.—

16 (A) ESTABLISHMENT OF AN INTER-
17 MEDIATE HOLDING COMPANY.—Upon a deter-
18 mination under paragraph (1), the company
19 that is the subject of the determination may es-
20 tablish an intermediate holding company in
21 which the financial activities of such company
22 and its subsidiaries shall be conducted (other
23 than the activities described in section
24 167(b)(2)) in compliance with any regulations
25 or guidance provided by the Board of Gov-

1 ernors. Such intermediate holding company
2 shall be subject to the supervision of the Board
3 of Governors and to prudential standards under
4 this title as if the intermediate holding company
5 were a nonbank financial company supervised
6 by the Board of Governors.

7 (B) ACTION OF THE BOARD OF GOV-
8 ERNORS.—To facilitate the supervision of the
9 financial activities subject to the determination
10 in paragraph (1), the Board of Governors may
11 require a company to establish an intermediate
12 holding company, as provided for in section
13 167, which would be subject to the supervision
14 of the Board of Governors and to prudential
15 standards under this title, as if the intermediate
16 holding company were a nonbank financial com-
17 pany supervised by the Board of Governors.

18 (4) NOTICE AND OPPORTUNITY FOR HEARING
19 AND FINAL DETERMINATION; JUDICIAL REVIEW.—
20 Subsections (d), (f), and (g) shall apply to deter-
21 minations made by the Council pursuant to para-
22 graph (1) in the same manner as such subsections
23 apply to nonbank financial companies.

1 (5) COVERED FINANCIAL ACTIVITIES.—For
2 purposes of this subsection, the term “financial ac-
3 tivities”—

4 (A) means activities that are financial in
5 nature (as defined in section 4(k) of the Bank
6 Holding Company Act of 1956);

7 (B) includes the ownership or control of
8 one or more insured depository institutions; and

9 (C) does not include internal financial ac-
10 tivities conducted for the company or any affil-
11 iate thereof, including internal treasury, invest-
12 ment, and employee benefit functions.

13 (6) ONLY FINANCIAL ACTIVITIES SUBJECT TO
14 PRUDENTIAL SUPERVISION.—Nonfinancial activities
15 of the company shall not be subject to supervision
16 by the Board of Governors and prudential standards
17 of the Board. For purposes of this Act, the financial
18 activities that are the subject of the determination in
19 paragraph (1) shall be subject to the same require-
20 ments as a nonbank financial company. Nothing in
21 this paragraph shall prohibit or limit the authority
22 of the Board of Governors to apply prudential stand-
23 ards under this title to the financial activities that
24 are subject to the determination in paragraph (1).

1 (d) REEVALUATION AND RESCISSION.—The Council
2 shall—

3 (1) not less frequently than annually, reevaluate
4 each determination made under subsections (a) and
5 (b) with respect to such nonbank financial company
6 supervised by the Board of Governors; and

7 (2) rescind any such determination, if the
8 Council, by a vote of not fewer than $\frac{2}{3}$ of the voting
9 members then serving, including an affirmative vote
10 by the Chairperson, determines that the nonbank fi-
11 nancial company no longer meets the standards
12 under subsection (a) or (b), as applicable.

13 (e) NOTICE AND OPPORTUNITY FOR HEARING AND
14 FINAL DETERMINATION.—

15 (1) IN GENERAL.—The Council shall provide to
16 a nonbank financial company written notice of a
17 proposed determination of the Council, including an
18 explanation of the basis of the proposed determina-
19 tion of the Council, that a nonbank financial com-
20 pany shall be supervised by the Board of Governors
21 and shall be subject to prudential standards in ac-
22 cordance with this title.

23 (2) HEARING.—Not later than 30 days after
24 the date of receipt of any notice of a proposed deter-
25 mination under paragraph (1), the nonbank finan-

1 cial company may request, in writing, an oppor-
2 tunity for a written or oral hearing before the Coun-
3 cil to contest the proposed determination. Upon re-
4 ceipt of a timely request, the Council shall fix a time
5 (not later than 30 days after the date of receipt of
6 the request) and place at which such company may
7 appear, personally or through counsel, to submit
8 written materials (or, at the sole discretion of the
9 Council, oral testimony and oral argument).

10 (3) FINAL DETERMINATION.—Not later than 60
11 days after the date of a hearing under paragraph
12 (2), the Council shall notify the nonbank financial
13 company of the final determination of the Council,
14 which shall contain a statement of the basis for the
15 decision of the Council.

16 (4) NO HEARING REQUESTED.—If a nonbank
17 financial company does not make a timely request
18 for a hearing, the Council shall notify the nonbank
19 financial company, in writing, of the final determina-
20 tion of the Council under subsection (a) or (b), as
21 applicable, not later than 10 days after the date by
22 which the company may request a hearing under
23 paragraph (2).

24 (f) EMERGENCY EXCEPTION.—

1 (1) IN GENERAL.—The Council may waive or
2 modify the requirements of subsection (d) with re-
3 spect to a nonbank financial company, if the Council
4 determines, by a vote of not fewer than $\frac{2}{3}$ of the
5 voting members then serving, including an affirma-
6 tive vote by the Chairperson, that such waiver or
7 modification is necessary or appropriate to prevent
8 or mitigate threats posed by the nonbank financial
9 company to the financial stability of the United
10 States.

11 (2) NOTICE.—The Council shall provide notice
12 of a waiver or modification under this subsection to
13 the nonbank financial company concerned as soon as
14 practicable, but not later than 24 hours after the
15 waiver or modification is granted.

16 (3) INTERNATIONAL COORDINATION.—In mak-
17 ing a determination under paragraph (1), the Coun-
18 cil shall consult with the appropriate home country
19 supervisor, if any, of the foreign nonbank financial
20 company that is being considered for such a deter-
21 mination.

22 (4) OPPORTUNITY FOR HEARING.—The Council
23 shall allow a nonbank financial company to request,
24 in writing, an opportunity for a written or oral hear-
25 ing before the Council to contest a waiver or modi-

1 fication under this paragraph, not later than 10
2 days after the date of receipt of notice of the waiver
3 or modification by the company. Upon receipt of a
4 timely request, the Council shall fix a time (not later
5 than 15 days after the date of receipt of the request)
6 and place at which the nonbank financial company
7 may appear, personally or through counsel, to sub-
8 mit written materials (or, at the sole discretion of
9 the Council, oral testimony and oral argument).

10 (5) NOTICE OF FINAL DETERMINATION.—Not
11 later than 30 days after the date of any hearing
12 under paragraph (4), the Council shall notify the
13 subject nonbank financial company of the final de-
14 termination of the Council under this paragraph,
15 which shall contain a statement of the basis for the
16 decision of the Council.

17 (g) CONSULTATION.—The Council shall consult with
18 the primary financial regulatory agency, if any, for each
19 nonbank financial company or subsidiary of a nonbank fi-
20 nancial company that is being considered for supervision
21 by the Board of Governors under this section before the
22 Council makes any final determination with respect to
23 such nonbank financial company under subsection (a), (b),
24 or (c).

1 (h) JUDICIAL REVIEW.—If the Council makes a final
2 determination under this section with respect to a
3 nonbank financial company, such nonbank financial com-
4 pany may, not later than 30 days after the date of receipt
5 of the notice of final determination under subsection
6 (d)(3) or (e)(4), bring an action in the United States dis-
7 trict court for the judicial district in which the home office
8 of such nonbank financial company is located, or in the
9 United States District Court for the District of Columbia,
10 for an order requiring that the final determination be re-
11 scinded, and the court shall, upon review, dismiss such ac-
12 tion or direct the final determination to be rescinded. Re-
13 view of such an action shall be limited to whether the final
14 determination made under this section was arbitrary and
15 capricious.

16 (i) INTERNATIONAL COORDINATION.—In exercising
17 its duties under this title with respect to foreign nonbank
18 financial companies, foreign-based bank holding compa-
19 nies, and cross-border activities and markets, the Council
20 shall consult with appropriate foreign regulatory authori-
21 ties, to the extent appropriate.

1 **SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPA-**
2 **NIES SUPERVISED BY THE BOARD OF GOV-**
3 **ERNORS.**

4 Not later than 180 days after the date of a final
5 Council determination under section 113 that a nonbank
6 financial company is to be supervised by the Board of Gov-
7 ernors, such company shall register with the Board of
8 Governors, on forms prescribed by the Board of Gov-
9 ernors, which shall include such information as the Board
10 of Governors, in consultation with the Council, may deem
11 necessary or appropriate to carry out this title.

12 **SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL**
13 **STANDARDS FOR NONBANK FINANCIAL COM-**
14 **PANIES SUPERVISED BY THE BOARD OF GOV-**
15 **ERNORS AND CERTAIN BANK HOLDING COM-**
16 **PANIES.**

17 (a) IN GENERAL.—

18 (1) PURPOSE.—In order to prevent or mitigate
19 risks to the financial stability of the United States
20 that could arise from the material financial distress,
21 failure, or ongoing activities of large, interconnected
22 financial institutions, the Council may make rec-
23 ommendations to the Board of Governors concerning
24 the establishment and refinement of prudential
25 standards and reporting and disclosure requirements
26 applicable to nonbank financial companies super-

1 vised by the Board of Governors and large, inter-
2 connected bank holding companies, that—

3 (A) are more stringent than those applica-
4 ble to other nonbank financial companies and
5 bank holding companies that do not present
6 similar risks to the financial stability of the
7 United States; and

8 (B) increase in stringency, based on the
9 considerations identified in subsection (b)(3).

10 (2) RECOMMENDED APPLICATION OF REQUIRED
11 STANDARDS.—In making recommendations under
12 this section, the Council may—

13 (A) differentiate among companies that are
14 subject to heightened standards on an indi-
15 vidual basis or by category, taking into consid-
16 eration their capital structure, riskiness, com-
17 plexity, financial activities (including the finan-
18 cial activities of their subsidiaries), size, and
19 any other risk-related factors that the Council
20 deems appropriate; or

21 (B) recommend an asset threshold that is
22 higher than \$50,000,000,000 for the applica-
23 tion of any standard described in subsections
24 (c) through (g).

25 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

1 (1) IN GENERAL.—The recommendations of the
2 Council under subsection (a) may include—

3 (A) risk-based capital requirements;

4 (B) leverage limits;

5 (C) liquidity requirements;

6 (D) resolution plan and credit exposure re-
7 port requirements;

8 (E) concentration limits;

9 (F) a contingent capital requirement;

10 (G) enhanced public disclosures;

11 (H) short-term debt limits; and

12 (I) overall risk management requirements.

13 (2) PRUDENTIAL STANDARDS FOR FOREIGN FI-
14 NANCIAL COMPANIES.—In making recommendations
15 concerning the standards set forth in paragraph (1)
16 that would apply to foreign nonbank financial com-
17 panies supervised by the Board of Governors or for-
18 eign-based bank holding companies, the Council
19 shall—

20 (A) give due regard to the principle of na-
21 tional treatment and equality of competitive op-
22 portunity; and

23 (B) take into account the extent to which
24 the foreign nonbank financial company or for-
25 eign-based bank holding company is subject on

1 a consolidated basis to home country standards
2 that are comparable to those applied to finan-
3 cial companies in the United States.

4 (3) CONSIDERATIONS.—In making rec-
5 ommendations concerning prudential standards
6 under paragraph (1), the Council shall—

7 (A) take into account differences among
8 nonbank financial companies supervised by the
9 Board of Governors and bank holding compa-
10 nies described in subsection (a), based on—

11 (i) the factors described in subsections
12 (a) and (b) of section 113;

13 (ii) whether the company owns an in-
14 sured depository institution;

15 (iii) nonfinancial activities and affili-
16 ations of the company; and

17 (iv) any other factors that the Council
18 determines appropriate;

19 (B) to the extent possible, ensure that
20 small changes in the factors listed in sub-
21 sections (a) and (b) of section 113 would not
22 result in sharp, discontinuous changes in the
23 prudential standards established under section
24 165; and

1 (C) adapt its recommendations as appro-
2 priate in light of any predominant line of busi-
3 ness of such company, including assets under
4 management or other activities for which par-
5 ticular standards may not be appropriate.

6 (c) CONTINGENT CAPITAL.—

7 (1) STUDY REQUIRED.—The Council shall con-
8 duct a study of the feasibility, benefits, costs, and
9 structure of a contingent capital requirement for
10 nonbank financial companies supervised by the
11 Board of Governors and bank holding companies de-
12 scribed in subsection (a), which study shall in-
13 clude—

14 (A) an evaluation of the degree to which
15 such requirement would enhance the safety and
16 soundness of companies subject to the require-
17 ment, promote the financial stability of the
18 United States, and reduce risks to United
19 States taxpayers;

20 (B) an evaluation of the characteristics
21 and amounts of contingent capital that should
22 be required;

23 (C) an analysis of potential prudential
24 standards that should be used to determine
25 whether the contingent capital of a company

1 would be converted to equity in times of finan-
2 cial stress;

3 (D) an evaluation of the costs to compa-
4 nies, the effects on the structure and operation
5 of credit and other financial markets, and other
6 economic effects of requiring contingent capital;

7 (E) an evaluation of the effects of such re-
8 quirement on the international competitiveness
9 of companies subject to the requirement and
10 the prospects for international coordination in
11 establishing such requirement; and

12 (F) recommendations for implementing
13 regulations.

14 (2) REPORT.—The Council shall submit a re-
15 port to Congress regarding the study required by
16 paragraph (1) not later than 2 years after the date
17 of enactment of this Act.

18 (3) RECOMMENDATIONS.—

19 (A) IN GENERAL.—Subsequent to submit-
20 ting a report to Congress under paragraph (2),
21 the Council may make recommendations to the
22 Board of Governors to require any nonbank fi-
23 nancial company supervised by the Board of
24 Governors and any bank holding company de-
25 scribed in subsection (a) to maintain a min-

1 imum amount of contingent capital that is con-
2 vertible to equity in times of financial stress.

3 (B) FACTORS TO CONSIDER.—In making
4 recommendations under this subsection, the
5 Council shall consider—

6 (i) an appropriate transition period
7 for implementation of a conversion under
8 this subsection;

9 (ii) the factors described in subsection
10 (b)(3);

11 (iii) capital requirements applicable to
12 a nonbank financial company supervised by
13 the Board of Governors or a bank holding
14 company described in subsection (a), and
15 subsidiaries thereof;

16 (iv) results of the study required by
17 paragraph (1); and

18 (v) any other factor that the Council
19 deems appropriate.

20 (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-
21 PORTS.—

22 (1) RESOLUTION PLAN.—The Council may
23 make recommendations to the Board of Governors
24 concerning the requirement that each nonbank fi-
25 nancial company supervised by the Board of Gov-

1 errors and each bank holding company described in
2 subsection (a) report periodically to the Council, the
3 Board of Governors, and the Corporation, the plan
4 of such company for rapid and orderly resolution in
5 the event of material financial distress or failure.

6 (2) CREDIT EXPOSURE REPORT.—The Council
7 may make recommendations to the Board of Gov-
8 ernors concerning the advisability of requiring each
9 nonbank financial company supervised by the Board
10 of Governors and bank holding company described in
11 subsection (a) to report periodically to the Council,
12 the Board of Governors, and the Corporation on—

13 (A) the nature and extent to which the
14 company has credit exposure to other signifi-
15 cant nonbank financial companies and signifi-
16 cant bank holding companies; and

17 (B) the nature and extent to which other
18 such significant nonbank financial companies
19 and significant bank holding companies have
20 credit exposure to that company.

21 (e) CONCENTRATION LIMITS.—In order to limit the
22 risks that the failure of any individual company could pose
23 to nonbank financial companies supervised by the Board
24 of Governors or bank holding companies described in sub-
25 section (a), the Council may make recommendations to the

1 Board of Governors to prescribe standards to limit such
2 risks, as set forth in section 165.

3 (f) **ENHANCED PUBLIC DISCLOSURES.**—The Council
4 may make recommendations to the Board of Governors
5 to require periodic public disclosures by bank holding com-
6 panies described in subsection (a) and by nonbank finan-
7 cial companies supervised by the Board of Governors, in
8 order to support market evaluation of the risk profile, cap-
9 ital adequacy, and risk management capabilities thereof.

10 (g) **SHORT-TERM DEBT LIMITS.**—The Council may
11 make recommendations to the Board of Governors to re-
12 quire short-term debt limits to mitigate the risks that an
13 over-accumulation of such debt could pose to bank holding
14 companies described in subsection (a), nonbank financial
15 companies supervised by the Board of Governors, or the
16 financial system.

17 **SEC. 116. REPORTS.**

18 (a) **IN GENERAL.**—Subject to subsection (b), the
19 Council, acting through the Office of Financial Research,
20 may require a bank holding company with total consoli-
21 dated assets of \$50,000,000,000 or greater or a nonbank
22 financial company supervised by the Board of Governors,
23 and any subsidiary thereof, to submit certified reports to
24 keep the Council informed as to—

25 (1) the financial condition of the company;

1 (2) systems for monitoring and controlling fi-
2 nancial, operating, and other risks;

3 (3) transactions with any subsidiary that is a
4 depository institution; and

5 (4) the extent to which the activities and oper-
6 ations of the company and any subsidiary thereof,
7 could, under adverse circumstances, have the poten-
8 tial to disrupt financial markets or affect the overall
9 financial stability of the United States.

10 (b) USE OF EXISTING REPORTS.—

11 (1) IN GENERAL.—For purposes of compliance
12 with subsection (a), the Council, acting through the
13 Office of Financial Research, shall, to the fullest ex-
14 tent possible, use—

15 (A) reports that a bank holding company,
16 nonbank financial company supervised by the
17 Board of Governors, or any functionally regu-
18 lated subsidiary of such company has been re-
19 quired to provide to other Federal or State reg-
20 ulatory agencies or to a relevant foreign super-
21 visory authority;

22 (B) information that is otherwise required
23 to be reported publicly; and

24 (C) externally audited financial statements.

1 (2) AVAILABILITY.—Each bank holding com-
2 pany described in subsection (a) and nonbank finan-
3 cial company supervised by the Board of Governors,
4 and any subsidiary thereof, shall provide to the
5 Council, at the request of the Council, copies of all
6 reports referred to in paragraph (1).

7 (3) CONFIDENTIALITY.—The Council shall
8 maintain the confidentiality of the reports obtained
9 under subsection (a) and paragraph (1)(A) of this
10 subsection.

11 **SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT**
12 **CEASE TO BE BANK HOLDING COMPANIES.**

13 (a) APPLICABILITY.—This section shall apply to—

14 (1) any entity that—

15 (A) was a bank holding company having
16 total consolidated assets equal to or greater
17 than \$50,000,000,000 as of January 1, 2010;
18 and

19 (B) received financial assistance under or
20 participated in the Capital Purchase Program
21 established under the Troubled Asset Relief
22 Program authorized by the Emergency Eco-
23 nomic Stabilization Act of 2008; and

1 (2) any successor entity (as defined by the
2 Board of Governors, in consultation with the Coun-
3 cil) to an entity described in paragraph (1).

4 (b) TREATMENT.—If an entity described in sub-
5 section (a) ceases to be a bank holding company at any
6 time after January 1, 2010, then such entity shall be
7 treated as a nonbank financial company supervised by the
8 Board of Governors, as if the Council had made a deter-
9 mination under section 113 with respect to that entity.

10 (c) APPEAL.—

11 (1) REQUEST FOR HEARING.—An entity may
12 request, in writing, an opportunity for a written or
13 oral hearing before the Council to appeal its treat-
14 ment as a nonbank financial company supervised by
15 the Board of Governors in accordance with this sec-
16 tion. Upon receipt of the request, the Council shall
17 fix a time (not later than 30 days after the date of
18 receipt of the request) and place at which such enti-
19 ty may appear, personally or through counsel, to
20 submit written materials (or, at the sole discretion
21 of the Council, oral testimony and oral argument).

22 (2) DECISION.—

23 (A) PROPOSED DECISION.—A Council deci-
24 sion to grant an appeal under this subsection
25 shall be made by a vote of not fewer than $\frac{2}{3}$

1 of the voting members then serving, including
2 an affirmative vote by the Chairperson. Not
3 later than 60 days after the date of a hearing
4 under paragraph (1), the Council shall submit
5 a report to, and may testify before, the Com-
6 mittee on Banking, Housing, and Urban Affairs
7 of the Senate and the Committee on Financial
8 Services of the House of Representatives on the
9 proposed decision of the Council regarding an
10 appeal under paragraph (1), which report shall
11 include a statement of the basis for the pro-
12 posed decision of the Council.

13 (B) NOTICE OF FINAL DECISION.—The
14 Council shall notify the subject entity of the
15 final decision of the Council regarding an ap-
16 peal under paragraph (1), which notice shall
17 contain a statement of the basis for the final
18 decision of the Council, not later than 60 days
19 after the later of—

20 (i) the date of the submission of the
21 report under subparagraph (A); or

22 (ii) if, not later than 1 year after the
23 date of submission of the report under sub-
24 paragraph (A), the Committee on Banking,
25 Housing, and Urban Affairs of the Senate

1 or the Committee on Financial Services of
2 the House of Representatives holds one or
3 more hearings regarding such report, the
4 date of the last such hearing.

5 (C) CONSIDERATIONS.—In making a deci-
6 sion regarding an appeal under paragraph (1),
7 the Council shall consider whether the company
8 meets the standards under section 113(a) or
9 113(b), as applicable, and the definition of the
10 term “nonbank financial company” under sec-
11 tion 102. The decision of the Council shall be
12 final, subject to the review under paragraph
13 (3).

14 (3) REVIEW.—If the Council denies an appeal
15 under this subsection, the Council shall, not less fre-
16 quently than annually, review and reevaluate the de-
17 cision.

18 **SEC. 118. COUNCIL FUNDING.**

19 Any expenses of the Council shall be treated as ex-
20 penses of, and paid by, the Office of Financial Research.

21 **SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL**
22 **DISPUTES AMONG MEMBER AGENCIES.**

23 (a) REQUEST FOR COUNCIL RECOMMENDATION.—
24 The Council shall seek to resolve a dispute among 2 or
25 more member agencies, if—

1 (1) a member agency has a dispute with an-
2 other member agency about the respective jurisdic-
3 tion over a particular bank holding company,
4 nonbank financial company, or financial activity or
5 product (excluding matters for which another dis-
6 pute mechanism specifically has been provided under
7 title X);

8 (2) the Council determines that the disputing
9 agencies cannot, after a demonstrated good faith ef-
10 fort, resolve the dispute without the intervention of
11 the Council; and

12 (3) any of the member agencies involved in the
13 dispute—

14 (A) provides all other disputants prior no-
15 tice of the intent to request dispute resolution
16 by the Council; and

17 (B) requests in writing, not earlier than 14
18 days after providing the notice described in sub-
19 paragraph (A), that the Council seek to resolve
20 the dispute.

21 (b) COUNCIL RECOMMENDATION.—The Council shall
22 seek to resolve each dispute described in subsection (a)—

23 (1) within a reasonable time after receiving the
24 dispute resolution request;

1 (2) after consideration of relevant information
2 provided by each agency party to the dispute; and

3 (3) by agreeing with 1 of the disputants regard-
4 ing the entirety of the matter, or by determining a
5 compromise position.

6 (c) FORM OF RECOMMENDATION.—Any Council rec-
7 ommendation under this section shall—

8 (1) be in writing;

9 (2) include an explanation of the reasons there-
10 for; and

11 (3) be approved by the affirmative vote of $\frac{2}{3}$ of
12 the voting members of the Council then serving.

13 (d) NONBINDING EFFECT.—Any recommendation
14 made by the Council under subsection (c) shall not be
15 binding on the Federal agencies that are parties to the
16 dispute.

17 **SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.**

18 (a) IN GENERAL.—The Council may provide for more
19 stringent regulation of a financial activity by issuing rec-
20 ommendations to the primary financial regulatory agen-
21 cies to apply new or heightened standards and safeguards,
22 including standards enumerated in section 115, for a fi-
23 nancial activity or practice conducted by bank holding
24 companies.
25 (b) IN GENERAL.—The Council may provide for more

1 companies or nonbank financial companies under their re-
2 spective jurisdictions, if the Council determines that the
3 conduct, scope, nature, size, scale, concentration, or inter-
4 connectedness of such activity or practice could create or
5 increase the risk of significant liquidity, credit, or other
6 problems spreading among bank holding companies and
7 nonbank financial companies, financial markets of the
8 United States, or low-income, minority, or underserved
9 communities.

10 (b) PROCEDURE FOR RECOMMENDATIONS TO REGU-
11 LATORS.—

12 (1) NOTICE AND OPPORTUNITY FOR COM-
13 MENT.—The Council shall consult with the primary
14 financial regulatory agencies and provide notice to
15 the public and opportunity for comment for any pro-
16 posed recommendation that the primary financial
17 regulatory agencies apply new or heightened stand-
18 ards and safeguards for a financial activity or prac-
19 tice.

20 (2) CRITERIA.—The new or heightened stand-
21 ards and safeguards for a financial activity or prac-
22 tice recommended under paragraph (1)—

23 (A) shall take costs to long-term economic
24 growth into account; and

1 (B) may include prescribing the conduct of
2 the activity or practice in specific ways (such as
3 by limiting its scope, or applying particular cap-
4 ital or risk management requirements to the
5 conduct of the activity) or prohibiting the activ-
6 ity or practice.

7 (c) IMPLEMENTATION OF RECOMMENDED STAND-
8 ARDS.—

9 (1) ROLE OF PRIMARY FINANCIAL REGULATORY
10 AGENCY.—

11 (A) IN GENERAL.—Each primary financial
12 regulatory agency may impose, require reports
13 regarding, examine for compliance with, and en-
14 force standards in accordance with this section
15 with respect to those entities for which it is the
16 primary financial regulatory agency.

17 (B) RULE OF CONSTRUCTION.—The au-
18 thority under this paragraph is in addition to,
19 and does not limit, any other authority of a pri-
20 mary financial regulatory agency. Compliance
21 by an entity with actions taken by a primary fi-
22 nancial regulatory agency under this section
23 shall be enforceable in accordance with the stat-
24 utes governing the respective jurisdiction of the
25 primary financial regulatory agency over the en-

1 tity, as if the agency action were taken under
2 those statutes.

3 (2) IMPOSITION OF STANDARDS.—The primary
4 financial regulatory agency shall impose the stand-
5 ards recommended by the Council in accordance
6 with subsection (a), or similar standards that the
7 Council deems acceptable, or shall explain in writing
8 to the Council, not later than 90 days after the date
9 on which the Council issues the recommendation,
10 why the agency has determined not to follow the rec-
11 ommendation of the Council.

12 (d) REPORT TO CONGRESS.—The Council shall re-
13 port to Congress on—

14 (1) any recommendations issued by the Council
15 under this section;

16 (2) the implementation of, or failure to imple-
17 ment such recommendation on the part of a primary
18 financial regulatory agency; and

19 (3) in any case in which no primary financial
20 regulatory agency exists for the nonbank financial
21 company conducting financial activities or practices
22 referred to in subsection (a), recommendations for
23 legislation that would prevent such activities or prac-
24 tices from threatening the stability of the financial
25 system of the United States.

1 (e) EFFECT OF RESCISSION OF IDENTIFICATION.—

2 (1) NOTICE.—The Council may recommend to
3 the relevant primary financial regulatory agency that
4 a financial activity or practice no longer requires any
5 standards or safeguards implemented under this sec-
6 tion.

7 (2) DETERMINATION OF PRIMARY FINANCIAL
8 REGULATORY AGENCY TO CONTINUE.—

9 (A) IN GENERAL.—Upon receipt of a rec-
10 ommendation under paragraph (1), a primary
11 financial regulatory agency that has imposed
12 standards under this section shall determine
13 whether such standards should remain in effect.

14 (B) APPEAL PROCESS.—Each primary fi-
15 nancial regulatory agency that has imposed
16 standards under this section shall promulgate
17 regulations to establish a procedure under
18 which entities under its jurisdiction may appeal
19 a determination by such agency under this
20 paragraph that standards imposed under this
21 section should remain in effect.

22 **SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.**

23 (a) MITIGATORY ACTIONS.—If the Board of Gov-
24 ernors determines that a bank holding company with total
25 consolidated assets of \$50,000,000,000 or more, or a

1 nonbank financial company supervised by the Board of
2 Governors, poses a grave threat to the financial stability
3 of the United States, the Board of Governors, upon an
4 affirmative vote of not fewer than $\frac{2}{3}$ of the voting mem-
5 bers of the Council then serving, shall require the subject
6 company—

7 (1) to limit the ability of the company to merge
8 with, acquire, consolidate with, or otherwise become
9 affiliated with another company;

10 (2) to restrict the ability to offer a financial
11 product or products;

12 (3) to terminate one or more activities;

13 (4) to impose conditions on the manner in
14 which the company conducts 1 or more activities; or

15 (5) if the Board of Governors determines that
16 such action is inadequate to mitigate a threat to the
17 financial stability of the United States in its rec-
18 ommendation, to sell or otherwise transfer assets or
19 off-balance-sheet items to unaffiliated entities.

20 (b) NOTICE AND HEARING.—

21 (1) IN GENERAL.—The Board of Governors, in
22 consultation with the Council, shall provide to a
23 company described in subsection (a) written notice
24 that such company is being considered for mitiga-
25 tory action pursuant to this section, including an ex-

1 planation of the basis for, and description of, the
2 proposed mitigatory action.

3 (2) HEARING.—Not later than 30 days after
4 the date of receipt of notice under paragraph (1),
5 the company may request, in writing, an opportunity
6 for a written or oral hearing before the Board of
7 Governors to contest the proposed mitigatory action.
8 Upon receipt of a timely request, the Board of Gov-
9 ernors shall fix a time (not later than 30 days after
10 the date of receipt of the request) and place at
11 which such company may appear, personally or
12 through counsel, to submit written materials (or, at
13 the discretion of the Board of Governors, in con-
14 sultation with the Council, oral testimony and oral
15 argument).

16 (3) DECISION.—Not later than 60 days after
17 the date of a hearing under paragraph (2), or not
18 later than 60 days after the provision of a notice
19 under paragraph (1) if no hearing was held, the
20 Board of Governors shall notify the company of the
21 final decision of the Board of Governors, including
22 the results of the vote of the Council, as described
23 in subsection (a).

24 (c) FACTORS FOR CONSIDERATION.—The Board of
25 Governors and the Council shall take into consideration

1 the factors set forth in subsection (a) or (b) of section
2 113, as applicable, in making any determination under
3 subsection (a).

4 (d) APPLICATION TO FOREIGN FINANCIAL COMPA-
5 NIES.—The Board of Governors may prescribe regulations
6 regarding the application of this section to foreign
7 nonbank financial companies supervised by the Board of
8 Governors and foreign-based bank holding companies—

9 (1) giving due regard to the principles of na-
10 tional treatment and equality of competitive oppor-
11 tunity; and

12 (2) taking into account the extent to which the
13 foreign nonbank financial company or foreign-based
14 bank holding company is subject on a consolidated
15 basis to home country standards that are com-
16 parable to those applied to financial companies in
17 the United States.

18 **SEC. 122. GAO AUDIT OF COUNCIL.**

19 (a) AUTHORITY TO AUDIT.—The Comptroller Gen-
20 eral of the United States may audit the activities of—

21 (1) the Council; and

22 (2) any person or entity acting on behalf of or
23 under the authority of the Council, to the extent
24 that such activities relate to work for the Council by
25 such person or entity.

1 (b) ACCESS TO INFORMATION.—

2 (1) IN GENERAL.—Notwithstanding any other
3 provision of law, the Comptroller General shall, upon
4 request and at such reasonable time and in such rea-
5 sonable form as the Comptroller General may re-
6 quest, have access to—

7 (A) any records or other information under
8 the control of or used by the Council;

9 (B) any records or other information under
10 the control of a person or entity acting on be-
11 half of or under the authority of the Council, to
12 the extent that such records or other informa-
13 tion is relevant to an audit under subsection
14 (a); and

15 (C) the officers, directors, employees, fi-
16 nancial advisors, staff, working groups, and
17 agents and representatives of the Council (as
18 related to the activities on behalf of the Council
19 of such agent or representative), at such rea-
20 sonable times as the Comptroller General may
21 request.

22 (2) COPIES.—The Comptroller General may
23 make and retain copies of such books, accounts, and
24 other records, access to which is granted under this

1 section, as the Comptroller General considers appro-
2 priate.

3 **SEC. 123. STUDY OF THE EFFECTS OF SIZE AND COM-**
4 **PLEXITY OF FINANCIAL INSTITUTIONS ON**
5 **CAPITAL MARKET EFFICIENCY AND ECO-**
6 **NOMIC GROWTH.**

7 (a) STUDY REQUIRED.—

8 (1) IN GENERAL.—The Chairman of the Coun-
9 cil shall carry out a study of the economic impact of
10 possible financial services regulatory limitations in-
11 tended to reduce systemic risk. Such study shall es-
12 timate the benefits and costs on the efficiency of
13 capital markets, on the financial sector, and on na-
14 tional economic growth, of—

15 (A) explicit or implicit limits on the max-
16 imum size of banks, bank holding companies,
17 and other large financial institutions;

18 (B) limits on the organizational complexity
19 and diversification of large financial institu-
20 tions;

21 (C) requirements for operational separa-
22 tion between business units of large financial
23 institutions in order to expedite resolution in
24 case of failure;

1 (D) limits on risk transfer between busi-
2 ness units of large financial institutions;

3 (E) requirements to carry contingent cap-
4 ital or similar mechanisms;

5 (F) limits on commingling of commercial
6 and financial activities by large financial insti-
7 tutions;

8 (G) segregation requirements between tra-
9 ditional financial activities and trading or other
10 high-risk operations in large financial institu-
11 tions; and

12 (H) other limitations on the activities or
13 structure of large financial institutions that
14 may be useful to limit systemic risk.

15 (2) RECOMMENDATIONS.—The study required
16 by this section shall include recommendations for the
17 optimal structure of any limits considered in sub-
18 paragraphs (A) through (E), in order to maximize
19 their effectiveness and minimize their economic im-
20 pact.

21 (b) REPORT.—Not later than the end of the 180-day
22 period beginning on the date of enactment of this title,
23 and not later than every 5 years thereafter, the Chairman
24 shall issue a report to the Congress containing any find-

1 ings and determinations made in carrying out the study
2 required under subsection (a).

3 **Subtitle B—Office of Financial**
4 **Research**

5 **SEC. 151. DEFINITIONS.**

6 For purposes of this subtitle—

7 (1) the terms “Office” and “Director” mean
8 the Office of Financial Research established under
9 this subtitle and the Director thereof, respectively;

10 (2) the term “financial company” has the same
11 meaning as in title II, and includes an insured de-
12 pository institution and an insurance company;

13 (3) the term “Data Center” means the data
14 center established under section 154;

15 (4) the term “Research and Analysis Center”
16 means the research and analysis center established
17 under section 154;

18 (5) the term “financial transaction data” means
19 the structure and legal description of a financial
20 contract, with sufficient detail to describe the rights
21 and obligations between counterparties and make
22 possible an independent valuation;

23 (6) the term “position data”—

24 (A) means data on financial assets or li-
25 abilities held on the balance sheet of a financial

1 company, where positions are created or
2 changed by the execution of a financial trans-
3 action; and

4 (B) includes information that identifies
5 counterparties, the valuation by the financial
6 company of the position, and information that
7 makes possible an independent valuation of the
8 position;

9 (7) the term “financial contract” means a le-
10 gally binding agreement between 2 or more counter-
11 parties, describing rights and obligations relating to
12 the future delivery of items of intrinsic or extrinsic
13 value among the counterparties; and

14 (8) the term “financial instrument” means a fi-
15 nancial contract in which the terms and conditions
16 are publicly available, and the roles of one or more
17 of the counterparties are assignable without the con-
18 sent of any of the other counterparties (including
19 common stock of a publicly traded company, govern-
20 ment bonds, or exchange traded futures and options
21 contracts).

22 **SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.**

23 (a) ESTABLISHMENT.—There is established within
24 the Department of the Treasury the Office of Financial
25 Research.

1 (b) DIRECTOR.—

2 (1) IN GENERAL.—The Office shall be headed
3 by a Director, who shall be appointed by the Presi-
4 dent, by and with the advice and consent of the Sen-
5 ate.

6 (2) TERM OF SERVICE.—The Director shall
7 serve for a term of 6 years, except that, in the event
8 that a successor is not nominated and confirmed by
9 the end of the term of service of a Director, the Di-
10 rector may continue to serve until such time as the
11 next Director is appointed and confirmed.

12 (3) EXECUTIVE LEVEL.—The Director shall be
13 compensated at Level III of the Executive Schedule.

14 (4) PROHIBITION ON DUAL SERVICE.—The in-
15 dividual serving in the position of Director may not,
16 during such service, also serve as the head of any fi-
17 nancial regulatory agency.

18 (5) RESPONSIBILITIES, DUTIES, AND AUTHOR-
19 ITY.—The Director shall have sole discretion in the
20 manner in which the Director fulfills the responsibil-
21 ities and duties and exercises the authorities de-
22 scribed in this subtitle.

23 (c) BUDGET.—The Director, in consultation with the
24 Chairperson, shall establish the annual budget of the Of-
25 fice.

1 (d) OFFICE PERSONNEL.—

2 (1) IN GENERAL.—The Director, in consulta-
3 tion with the Chairperson, may fix the number of,
4 and appoint and direct, all employees of the Office.

5 (2) COMPENSATION.—The Director, in con-
6 sultation with the Chairperson, shall fix, adjust, and
7 administer the pay for all employees of the Office,
8 without regard to chapter 51 or subchapter III of
9 chapter 53 of title 5, United States Code, relating
10 to classification of positions and General Schedule
11 pay rates.

12 (3) COMPARABILITY.—Section 1206(a) of the
13 Financial Institutions Reform, Recovery, and En-
14 forcement Act of 1989 (12 U.S.C. 1833b(a)) is
15 amended—

16 (A) by striking “Finance Board,” and in-
17 serting “Finance Board, the Office of Financial
18 Research, and the Bureau of Consumer Finan-
19 cial Protection”; and

20 (B) by striking “and the Office of Thrift
21 Supervision,”.

22 (4) SENIOR EXECUTIVES.—Section
23 3132(a)(1)(D) of title 5, United States Code, is
24 amended by striking “and the National Credit Union
25 Administration;” and inserting “the National Credit

1 Union Administration, the Bureau of Consumer Fi-
2 nancial Protection, and the Office of Financial Re-
3 search;”.

4 (e) ASSISTANCE FROM FEDERAL AGENCIES.—Any
5 department or agency of the United States may provide
6 to the Office and any special advisory, technical, or profes-
7 sional committees appointed by the Office, such services,
8 funds, facilities, staff, and other support services as the
9 Office may determine advisable. Any Federal Government
10 employee may be detailed to the Office without reimburse-
11 ment, and such detail shall be without interruption or loss
12 of civil service status or privilege.

13 (f) PROCUREMENT OF TEMPORARY AND INTERMIT-
14 TENT SERVICES.—The Director may procure temporary
15 and intermittent services under section 3109(b) of title 5,
16 United States Code, at rates for individuals which do not
17 exceed the daily equivalent of the annual rate of basic pay
18 prescribed for Level V of the Executive Schedule under
19 section 5316 of such title.

20 (g) POST-EMPLOYMENT PROHIBITIONS.—The Sec-
21 retary, with the concurrence of the Director of the Office
22 of Government Ethics, shall issue regulations prohibiting
23 the Director and any employee of the Office who has had
24 access to the transaction or position data maintained by
25 the Data Center or other business confidential information

1 about financial entities required to report to the Office
2 from being employed by or providing advice or consulting
3 services to a financial company, for a period of 1 year
4 after last having had access in the course of official duties
5 to such transaction or position data or business confiden-
6 tial information, regardless of whether that entity is re-
7 quired to report to the Office. For employees whose access
8 to business confidential information was limited, the regu-
9 lations may provide, on a case-by-case basis, for a shorter
10 period of post-employment prohibition, provided that the
11 shorter period does not compromise business confidential
12 information.

13 (h) TECHNICAL AND PROFESSIONAL ADVISORY COM-
14 MITTEES.—The Office, in consultation with the Chair-
15 person, may appoint such special advisory, technical, or
16 professional committees as may be useful in carrying out
17 the functions of the Office, and the members of such com-
18 mittees may be staff of the Office, or other persons, or
19 both.

20 (i) FELLOWSHIP PROGRAM.—The Office, in consulta-
21 tion with the Chairperson, may establish and maintain an
22 academic and professional fellowship program, under
23 which qualified academics and professionals shall be in-
24 vited to spend not longer than 2 years at the Office, to

1 perform research and to provide advanced training for Of-
2 fice personnel.

3 (j) EXECUTIVE SCHEDULE COMPENSATION.—Sec-
4 tion 5314 of title 5, United States Code, is amended by
5 adding at the end the following new item:

6 “Director of the Office of Financial Research.”.

7 **SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.**

8 (a) PURPOSE AND DUTIES.—The purpose of the Of-
9 fice is to support the Council in fulfilling the purposes and
10 duties of the Council, as set forth in subtitle A, and to
11 support member agencies, by—

12 (1) collecting data on behalf of the Council, and
13 providing such data to the Council and member
14 agencies;

15 (2) standardizing the types and formats of data
16 reported and collected;

17 (3) performing applied research and essential
18 long-term research;

19 (4) developing tools for risk measurement and
20 monitoring;

21 (5) performing other related services;

22 (6) making the results of the activities of the
23 Office available to financial regulatory agencies; and

1 (7) assisting such member agencies in deter-
2 mining the types and formats of data authorized by
3 this Act to be collected by such member agencies.

4 (b) ADMINISTRATIVE AUTHORITY.—The Office
5 may—

6 (1) share data and information, including soft-
7 ware developed by the Office, with the Council,
8 member agencies, and the Bureau of Economic
9 Analysis, which shared data, information, and soft-
10 ware—

11 (A) shall be maintained with at least the
12 same level of security as is used by the Office;
13 and

14 (B) may not be shared with any individual
15 or entity without the permission of the Council;

16 (2) sponsor and conduct research projects; and

17 (3) assist, on a reimbursable basis, with finan-
18 cial analyses undertaken at the request of other
19 Federal agencies that are not member agencies.

20 (c) RULEMAKING AUTHORITY.—

21 (1) SCOPE.—The Office, in consultation with
22 the Chairperson, shall issue rules, regulations, and
23 orders only to the extent necessary to carry out the
24 purposes and duties described in paragraphs (1),
25 (2), and (7) of subsection (a).

1 (2) STANDARDIZATION.—Member agencies, in
2 consultation with the Office, shall implement regula-
3 tions promulgated by the Office under paragraph (1)
4 to standardize the types and formats of data re-
5 ported and collected on behalf of the Council, as de-
6 scribed in subsection (a)(2). If a member agency
7 fails to implement such regulations prior to the expi-
8 ration of the 3-year period following the date of pub-
9 lication of final regulations, the Office, in consulta-
10 tion with the Chairperson, may implement such reg-
11 ulations with respect to the financial entities under
12 the jurisdiction of the member agency. This para-
13 graph shall not supersede or interfere with the inde-
14 pendent authority of a member agency under other
15 law to collect data, in such format and manner as
16 the member agency requires.

17 (d) TESTIMONY.—

18 (1) IN GENERAL.—The Director of the Office
19 shall report to and testify before the Committee on
20 Banking, Housing, and Urban Affairs of the Senate
21 and the Committee on Financial Services of the
22 House of Representatives annually on the activities
23 of the Office, including the work of the Data Center
24 and the Research and Analysis Center, and the as-
25 sessment of the Office of significant financial market

1 developments and potential emerging threats to the
2 financial stability of the United States.

3 (2) NO PRIOR REVIEW.—No officer or agency of
4 the United States shall have any authority to require
5 the Director to submit the testimony required under
6 paragraph (1) or other congressional testimony to
7 any officer or agency of the United States for ap-
8 proval, comment, or review prior to the submission
9 of such testimony. Any such testimony to Congress
10 shall include a statement that the views expressed
11 therein are those of the Director and do not nec-
12 essarily represent the views of the President.

13 (e) ADDITIONAL REPORTS.—The Director may pro-
14 vide additional reports to Congress concerning the finan-
15 cial stability of the United States. The Director shall no-
16 tify the Council of any such additional reports provided
17 to Congress.

18 (f) SUBPOENA.—

19 (1) IN GENERAL.—The Director may require
20 from a financial company, by subpoena, the produc-
21 tion of the data requested under subsection (a)(1)
22 and section 154(b)(1), but only upon a written find-
23 ing by the Director that—

24 (A) such data is required to carry out the
25 functions described under this subtitle; and

1 (B) the Office has coordinated with the
2 relevant primary financial regulatory agency, as
3 required under section 154(b)(1)(B)(ii).

4 (2) FORMAT.—Subpoenas under paragraph (1)
5 shall bear the signature of the Director, and shall be
6 served by any person or class of persons designated
7 by the Director for that purpose.

8 (3) ENFORCEMENT.—In the case of contumacy
9 or failure to obey a subpoena, the subpoena shall be
10 enforceable by order of any appropriate district
11 court of the United States. Any failure to obey the
12 order of the court may be punished by the court as
13 a contempt of court.

14 **SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBIL-**
15 **ITIES OF PRIMARY PROGRAMMATIC UNITS.**

16 (a) IN GENERAL.—There are established within the
17 Office, to carry out the programmatic responsibilities of
18 the Office—

19 (1) the Data Center; and

20 (2) the Research and Analysis Center.

21 (b) DATA CENTER.—

22 (1) GENERAL DUTIES.—

23 (A) DATA COLLECTION.—The Data Cen-
24 ter, on behalf of the Council, shall collect, vali-
25 date, and maintain all data necessary to carry

1 out the duties of the Data Center, as described
2 in this subtitle. The data assembled shall be ob-
3 tained from member agencies, commercial data
4 providers, publicly available data sources, and
5 financial entities under subparagraph (B).

6 (B) AUTHORITY.—

7 (i) IN GENERAL.—The Office may, as
8 determined by the Council or by the Direc-
9 tor in consultation with the Council, re-
10 quire the submission of periodic and other
11 reports from any financial company for the
12 purpose of assessing the extent to which a
13 financial activity or financial market in
14 which the financial company participates,
15 or the financial company itself, poses a
16 threat to the financial stability of the
17 United States.

18 (ii) MITIGATION OF REPORT BUR-
19 DEN.—Before requiring the submission of
20 a report from any financial company that
21 is regulated by a member agency, any pri-
22 mary financial regulatory agency, a foreign
23 supervisory authority, or the Office shall
24 coordinate with such agencies or authority,
25 and shall, whenever possible, rely on infor-

1 mation available from such agencies or au-
2 thority.

3 (iii) COLLECTION OF FINANCIAL
4 TRANSACTION AND POSITION DATA.—The
5 Office shall collect, on a schedule deter-
6 mined by the Director, in consultation with
7 the Council, financial transaction data and
8 position data from financial companies.

9 (C) RULEMAKING.—The Office shall pro-
10 mulgate regulations pursuant to subsections
11 (a)(1), (a)(2), (a)(7), and (c)(1) of section 153
12 regarding the type and scope of the data to be
13 collected by the Data Center under this para-
14 graph.

15 (2) RESPONSIBILITIES.—

16 (A) PUBLICATION.—The Data Center shall
17 prepare and publish, in a manner that is easily
18 accessible to the public—

19 (i) a financial company reference
20 database;

21 (ii) a financial instrument reference
22 database; and

23 (iii) formats and standards for Office
24 data, including standards for reporting fi-

1 nancial transaction and position data to
2 the Office.

3 (B) CONFIDENTIALITY.—The Data Center
4 shall not publish any confidential data under
5 subparagraph (A).

6 (3) INFORMATION SECURITY.—The Director
7 shall ensure that data collected and maintained by
8 the Data Center are kept secure and protected
9 against unauthorized disclosure.

10 (4) CATALOG OF FINANCIAL ENTITIES AND IN-
11 STRUMENTS.—The Data Center shall maintain a
12 catalog of the financial entities and instruments re-
13 ported to the Office.

14 (5) AVAILABILITY TO THE COUNCIL AND MEM-
15 BER AGENCIES.—The Data Center shall make data
16 collected and maintained by the Data Center avail-
17 able to the Council and member agencies, as nec-
18 essary to support their regulatory responsibilities.

19 (6) OTHER AUTHORITY.—The Office shall,
20 after consultation with the member agencies, provide
21 certain data to financial industry participants and to
22 the general public to increase market transparency
23 and facilitate research on the financial system, to
24 the extent that intellectual property rights are not
25 violated, business confidential information is prop-

1 erly protected, and the sharing of such information
2 poses no significant threats to the financial system
3 of the United States.

4 (c) RESEARCH AND ANALYSIS CENTER.—

5 (1) GENERAL DUTIES.—The Research and
6 Analysis Center, on behalf of the Council, shall de-
7 velop and maintain independent analytical capabili-
8 ties and computing resources—

9 (A) to develop and maintain metrics and
10 reporting systems for risks to the financial sta-
11 bility of the United States;

12 (B) to monitor, investigate, and report on
13 changes in systemwide risk levels and patterns
14 to the Council and Congress;

15 (C) to conduct, coordinate, and sponsor re-
16 search to support and improve regulation of fi-
17 nancial entities and markets;

18 (D) to evaluate and report on stress tests
19 or other stability-related evaluations of financial
20 entities overseen by the member agencies;

21 (E) to maintain expertise in such areas as
22 may be necessary to support specific requests
23 for advice and assistance from financial regu-
24 lators;

1 (F) to investigate disruptions and failures
2 in the financial markets, report findings, and
3 make recommendations to the Council based on
4 those findings;

5 (G) to conduct studies and provide advice
6 on the impact of policies related to systemic
7 risk; and

8 (H) to promote best practices for financial
9 risk management.

10 (d) REPORTING RESPONSIBILITIES.—

11 (1) REQUIRED REPORTS.—Not later than 2
12 years after the date of enactment of this Act, and
13 not later than 120 days after the end of each fiscal
14 year thereafter, the Office shall prepare and submit
15 a report to Congress.

16 (2) CONTENT.—Each report required by this
17 subsection shall assess the state of the United States
18 financial system, including—

19 (A) an analysis of any threats to the finan-
20 cial stability of the United States;

21 (B) the status of the efforts of the Office
22 in meeting the mission of the Office; and

23 (C) key findings from the research and
24 analysis of the financial system by the Office.

1 **SEC. 155. FUNDING.**

2 (a) FINANCIAL RESEARCH FUND.—

3 (1) FUND ESTABLISHED.—There is established
4 in the Treasury of the United States a separate fund
5 to be known as the “Financial Research Fund”.

6 (2) FUND RECEIPTS.—All amounts provided to
7 the Office under subsection (c), and all assessments
8 that the Office receives under subsection (d) shall be
9 deposited into the Financial Research Fund.

10 (3) INVESTMENTS AUTHORIZED.—

11 (A) AMOUNTS IN FUND MAY BE IN-
12 VESTED.—The Director may request the Sec-
13 retary to invest the portion of the Financial Re-
14 search Fund that is not, in the judgment of the
15 Director, required to meet the needs of the Of-
16 fice.

17 (B) ELIGIBLE INVESTMENTS.—Invest-
18 ments shall be made by the Secretary in obliga-
19 tions of the United States or obligations that
20 are guaranteed as to principal and interest by
21 the United States, with maturities suitable to
22 the needs of the Financial Research Fund, as
23 determined by the Director.

24 (4) INTEREST AND PROCEEDS CREDITED.—The
25 interest on, and the proceeds from the sale or re-
26 demption of, any obligations held in the Financial

1 Research Fund shall be credited to and form a part
2 of the Financial Research Fund.

3 (b) USE OF FUNDS.—

4 (1) IN GENERAL.—Funds obtained by, trans-
5 ferred to, or credited to the Financial Research
6 Fund shall be immediately available to the Office,
7 and shall remain available until expended, to pay the
8 expenses of the Office in carrying out the duties and
9 responsibilities of the Office.

10 (2) FEES, ASSESSMENTS, AND OTHER FUNDS
11 NOT GOVERNMENT FUNDS.—Funds obtained by,
12 transferred to, or credited to the Financial Research
13 Fund shall not be construed to be Government funds
14 or appropriated moneys.

15 (3) AMOUNTS NOT SUBJECT TO APPORTION-
16 MENT.—Notwithstanding any other provision of law,
17 amounts in the Financial Research Fund shall not
18 be subject to apportionment for purposes of chapter
19 15 of title 31, United States Code, or under any
20 other authority, or for any other purpose.

21 (c) INTERIM FUNDING.—During the 2-year period
22 following the date of enactment of this Act, the Board of
23 Governors shall provide to the Office an amount sufficient
24 to cover the expenses of the Office.

1 (d) PERMANENT SELF-FUNDING.—Beginning 2 years
2 after the date of enactment of this Act, the Secretary shall
3 establish, by regulation, and with the approval of the
4 Council, an assessment schedule, including the assessment
5 base and rates, applicable to bank holding companies with
6 total consolidated assets of \$50,000,000,000 or greater
7 and nonbank financial companies supervised by the Board
8 of Governors, that takes into account differences among
9 such companies, based on the considerations for estab-
10 lishing the prudential standards under section 115, to col-
11 lect assessments equal to the total expenses of the Office.

12 **SEC. 156. TRANSITION OVERSIGHT.**

13 (a) PURPOSE.—The purpose of this section is to en-
14 sure that the Office—

- 15 (1) has an orderly and organized startup;
16 (2) attracts and retains a qualified workforce;
17 and
18 (3) establishes comprehensive employee training
19 and benefits programs.

20 (b) REPORTING REQUIREMENT.—

21 (1) IN GENERAL.—The Office shall submit an
22 annual report to the Committee on Banking, Hous-
23 ing, and Urban Affairs of the Senate and the Com-
24 mittee on Financial Services of the House of Rep-

1 representatives that includes the plans described in
2 paragraph (2).

3 (2) PLANS.—The plans described in this para-
4 graph are as follows:

5 (A) TRAINING AND WORKFORCE DEVELOP-
6 MENT PLAN.—The Office shall submit a train-
7 ing and workforce development plan that in-
8 cludes, to the extent practicable—

9 (i) identification of skill and technical
10 expertise needs and actions taken to meet
11 those requirements;

12 (ii) steps taken to foster innovation
13 and creativity;

14 (iii) leadership development and suc-
15 cession planning; and

16 (iv) effective use of technology by em-
17 ployees.

18 (B) WORKPLACE FLEXIBILITY PLAN.—The
19 Office shall submit a workforce flexibility plan
20 that includes, to the extent practicable—

21 (i) telework;

22 (ii) flexible work schedules;

23 (iii) phased retirement;

24 (iv) reemployed annuitants;

25 (v) part-time work;

- 1 (vi) job sharing;
- 2 (vii) parental leave benefits and
- 3 childcare assistance;
- 4 (viii) domestic partner benefits;
- 5 (ix) other workplace flexibilities; or
- 6 (x) any combination of the items de-
- 7 scribed in clauses (i) through (ix).

8 (C) RECRUITMENT AND RETENTION
9 PLAN.—The Office shall submit a recruitment
10 and retention plan that includes, to the extent
11 practicable, provisions relating to—

- 12 (i) the steps necessary to target highly
- 13 qualified applicant pools with diverse back-
- 14 grounds;
- 15 (ii) streamlined employment applica-
- 16 tion processes;
- 17 (iii) the provision of timely notifica-
- 18 tion of the status of employment applica-
- 19 tions to applicants; and
- 20 (iv) the collection of information to
- 21 measure indicators of hiring effectiveness.

22 (c) EXPIRATION.—The reporting requirement under
23 subsection (b) shall terminate 5 years after the date of
24 enactment of this Act.

1 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion may be construed to affect—

3 (1) a collective bargaining agreement, as that
4 term is defined in section 7103(a)(8) of title 5,
5 United States Code, that is in effect on the date of
6 enactment of this Act; or

7 (2) the rights of employees under chapter 71 of
8 title 5, United States Code.

9 **Subtitle C—Additional Board of**
10 **Governors Authority for Certain**
11 **Nonbank Financial Companies**
12 **and Bank Holding Companies**

13 **SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK**
14 **FINANCIAL COMPANIES BY THE BOARD OF**
15 **GOVERNORS.**

16 (a) REPORTS.—

17 (1) IN GENERAL.—The Board of Governors
18 may require each nonbank financial company super-
19 vised by the Board of Governors, and any subsidiary
20 thereof, to submit reports under oath, to keep the
21 Board of Governors informed as to—

22 (A) the financial condition of the company
23 or subsidiary, systems of the company or sub-
24 sidiary for monitoring and controlling financial,
25 operating, and other risks, and the extent to

1 which the activities and operations of the com-
2 pany or subsidiary pose a threat to the financial
3 stability of the United States; and

4 (B) compliance by the company or sub-
5 sidiary with the requirements of this title.

6 (2) USE OF EXISTING REPORTS AND INFORMA-
7 TION.—In carrying out subsection (a), the Board of
8 Governors shall, to the fullest extent possible, use—

9 (A) reports and supervisory information
10 that a nonbank financial company or subsidiary
11 thereof has been required to provide to other
12 Federal or State regulatory agencies;

13 (B) information otherwise obtainable from
14 Federal or State regulatory agencies;

15 (C) information that is otherwise required
16 to be reported publicly; and

17 (D) externally audited financial statements
18 of such company or subsidiary.

19 (3) AVAILABILITY.—Upon the request of the
20 Board of Governors, a nonbank financial company
21 supervised by the Board of Governors, or a sub-
22 sidiary thereof, shall promptly provide to the Board
23 of Governors any information described in para-
24 graph (2).

25 (b) EXAMINATIONS.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 the Board of Governors may examine any nonbank
3 financial company supervised by the Board of Gov-
4 ernors and any subsidiary of such company, to in-
5 form the Board of Governors of—

6 (A) the nature of the operations and finan-
7 cial condition of the company and such sub-
8 sidiary;

9 (B) the financial, operational, and other
10 risks of the company or such subsidiary that
11 may pose a threat to the safety and soundness
12 of such company or subsidiary or to the finan-
13 cial stability of the United States;

14 (C) the systems for monitoring and con-
15 trolling such risks; and

16 (D) compliance by the company or such
17 subsidiary with the requirements of this title.

18 (2) USE OF EXAMINATION REPORTS AND IN-
19 FORMATION.—For purposes of this subsection, the
20 Board of Governors shall, to the fullest extent pos-
21 sible, rely on reports of examination of any sub-
22 sidiary depository institution or functionally regu-
23 lated subsidiary made by the primary financial regu-
24 latory agency for that subsidiary, and on informa-
25 tion described in subsection (a)(2).

1 (c) COORDINATION WITH PRIMARY FINANCIAL REG-
2 ULATORY AGENCY.—The Board of Governors shall—

3 (1) provide reasonable notice to, and consult
4 with, the primary financial regulatory agency for
5 any subsidiary before requiring a report or com-
6 mencing an examination of such subsidiary under
7 this section; and

8 (2) avoid duplication of examination activities,
9 reporting requirements, and requests for informa-
10 tion, to the fullest extent possible.

11 **SEC. 162. ENFORCEMENT.**

12 (a) IN GENERAL.—Except as provided in subsection
13 (b), a nonbank financial company supervised by the Board
14 of Governors and any subsidiaries of such company (other
15 than any depository institution subsidiary) shall be subject
16 to the provisions of subsections (b) through (n) of section
17 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818),
18 in the same manner and to the same extent as if the com-
19 pany were a bank holding company, as provided in section
20 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C.
21 1818(b)(3)).

22 (b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY
23 REGULATED SUBSIDIARIES.—

24 (1) REFERRAL.—If the Board of Governors de-
25 termines that a condition, practice, or activity of a

1 depository institution subsidiary or functionally reg-
2 ulated subsidiary of a nonbank financial company
3 supervised by the Board of Governors does not com-
4 ply with the regulations or orders prescribed by the
5 Board of Governors under this Act, or otherwise
6 poses a threat to the financial stability of the United
7 States, the Board of Governors may recommend, in
8 writing, to the primary financial regulatory agency
9 for the subsidiary that such agency initiate a super-
10 visory action or enforcement proceeding. The rec-
11 ommendation shall be accompanied by a written ex-
12 planation of the concerns giving rise to the rec-
13 ommendation.

14 (2) BACK-UP AUTHORITY OF THE BOARD OF
15 GOVERNORS.—If, during the 60-day period begin-
16 ning on the date on which the primary financial reg-
17 ulatory agency receives a recommendation under
18 paragraph (1), the primary financial regulatory
19 agency does not take supervisory or enforcement ac-
20 tion against a subsidiary that is acceptable to the
21 Board of Governors, the Board of Governors (upon
22 a vote of its members) may take the recommended
23 supervisory or enforcement action, as if the sub-
24 sidiary were a bank holding company subject to su-
25 pervision by the Board of Governors.

1 **SEC. 163. ACQUISITIONS.**

2 (a) ACQUISITIONS OF BANKS; TREATMENT AS A
3 BANK HOLDING COMPANY.—For purposes of section 3 of
4 the Bank Holding Company Act of 1956 (12 U.S.C.
5 1842), a nonbank financial company supervised by the
6 Board of Governors shall be deemed to be, and shall be
7 treated as, a bank holding company.

8 (b) ACQUISITION OF NONBANK COMPANIES.—

9 (1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—
10 Notwithstanding section 4(k)(6)(B) of the Bank
11 Holding Company Act of 1956 (12 U.S.C.
12 1843(k)(6)(B)), a bank holding company with total
13 consolidated assets equal to or greater than
14 \$50,000,000,000 or a nonbank financial company
15 supervised by the Board of Governors shall not ac-
16 quire direct or indirect ownership or control of any
17 voting shares of any company (other than an insured
18 depository institution) that is engaged in activities
19 described in section 4(k) of the Bank Holding Com-
20 pany Act of 1956 having total consolidated assets of
21 \$10,000,000,000 or more, without providing written
22 notice to the Board of Governors in advance of the
23 transaction.

24 (2) EXEMPTIONS.—The prior notice require-
25 ment in paragraph (1) shall not apply with regard
26 to the acquisition of shares that would qualify for

1 the exemptions in section 4(c) or section 4(k)(4)(E)
2 of the Bank Holding Company Act of 1956 (12
3 U.S.C. 1843(c) and (k)(4)(E)).

4 (3) NOTICE PROCEDURES.—The notice proce-
5 dures set forth in section 4(j)(1) of the Bank Hold-
6 ing Company Act of 1956 (12 U.S.C. 1843(j)(1)),
7 without regard to section 4(j)(3) of that Act, shall
8 apply to an acquisition of any company (other than
9 an insured depository institution) by a bank holding
10 company with total consolidated assets equal to or
11 greater than \$50,000,000,000 or a nonbank finan-
12 cial company supervised by the Board of Governors,
13 as described in paragraph (1), including any such
14 company engaged in activities described in section
15 4(k) of that Act.

16 (4) STANDARDS FOR REVIEW.—In addition to
17 the standards provided in section 4(j)(2) of the
18 Bank Holding Company Act of 1956 (12 U.S.C.
19 1843(j)(2)), the Board of Governors shall consider
20 the extent to which the proposed acquisition would
21 result in greater or more concentrated risks to global
22 or United States financial stability or the United
23 States economy.

24 (5) HART-SCOTT-RODINO FILING REQUIRE-
25 MENT.—Solely for purposes of section 7A(c)(8) of

1 the Clayton Act (15 U.S.C. 18a(c)(8)), the trans-
2 actions subject to the requirements of paragraph (1)
3 shall be treated as if Board of Governors approval
4 is not required.

5 **SEC. 164. PROHIBITION AGAINST MANAGEMENT INTER-**
6 **LOCKS BETWEEN CERTAIN FINANCIAL COM-**
7 **PANIES.**

8 A nonbank financial company supervised by the
9 Board of Governors shall be treated as a bank holding
10 company for purposes of the Depository Institutions Man-
11 agement Interlocks Act (12 U.S.C. 3201 et seq.), except
12 that the Board of Governors shall not exercise the author-
13 ity provided in section 7 of that Act (12 U.S.C. 3207)
14 to permit service by a management official of a nonbank
15 financial company supervised by the Board of Governors
16 as a management official of any bank holding company
17 with total consolidated assets equal to or greater than
18 \$50,000,000,000, or other nonaffiliated nonbank financial
19 company supervised by the Board of Governors (other
20 than to provide a temporary exemption for interlocks re-
21 sulting from a merger, acquisition, or consolidation).

1 **SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL**
2 **STANDARDS FOR NONBANK FINANCIAL COM-**
3 **PANIES SUPERVISED BY THE BOARD OF GOV-**
4 **ERNORS AND CERTAIN BANK HOLDING COM-**
5 **PANIES.**

6 (a) IN GENERAL.—

7 (1) PURPOSE.—In order to prevent or mitigate
8 risks to the financial stability of the United States
9 that could arise from the material financial distress
10 or failure, or ongoing activities, of large, inter-
11 connected financial institutions, the Board of Gov-
12 ernors shall, on its own or pursuant to recommenda-
13 tions by the Council under section 115, establish
14 prudential standards for nonbank financial compa-
15 nies supervised by the Board of Governors and bank
16 holding companies with total consolidated assets
17 equal to or greater than \$50,000,000,000 that—

18 (A) are more stringent than the standards
19 and requirements applicable to nonbank finan-
20 cial companies and bank holding companies
21 that do not present similar risks to the financial
22 stability of the United States; and

23 (B) increase in stringency, based on the
24 considerations identified in subsection (b)(3).

25 (2) TAILORED APPLICATION.—

1 (A) IN GENERAL.—In prescribing more
2 stringent prudential standards under this sec-
3 tion, the Board of Governors may, on its own
4 or pursuant to a recommendation by the Coun-
5 cil in accordance with section 115, differentiate
6 among companies on an individual basis or by
7 category, taking into consideration their capital
8 structure, riskiness, complexity, financial activi-
9 ties (including the financial activities of their
10 subsidiaries), size, and any other risk-related
11 factors that the Board of Governors deems ap-
12 propriate.

13 (B) ADJUSTMENT OF THRESHOLD FOR AP-
14 PPLICATION OF CERTAIN STANDARDS.—The
15 Board of Governors may, pursuant to a rec-
16 ommendation by the Council in accordance with
17 section 115, establish an asset threshold above
18 \$50,000,000,000 for the application of any
19 standard established under subsections (c)
20 through (g).

21 (b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

22 (1) IN GENERAL.—

23 (A) REQUIRED STANDARDS.—The Board
24 of Governors shall establish prudential stand-
25 ards for nonbank financial companies super-

1 vised by the Board of Governors and bank hold-
2 ing companies described in subsection (a), that
3 shall include—

4 (i) risk-based capital requirements
5 and leverage limits, unless the Board of
6 Governors, in consultation with the Coun-
7 cil, determines that such requirements are
8 not appropriate for a company subject to
9 more stringent prudential standards be-
10 cause of the activities of such company
11 (such as investment company activities or
12 assets under management) or structure, in
13 which case, the Board of Governors shall
14 apply other standards that result in simi-
15 larly stringent risk controls;

16 (ii) liquidity requirements;

17 (iii) overall risk management require-
18 ments;

19 (iv) resolution plan and credit expo-
20 sure report requirements; and

21 (v) concentration limits.

22 (B) ADDITIONAL STANDARDS AUTHOR-
23 IZED.—The Board of Governors may establish
24 additional prudential standards for nonbank fi-
25 nancial companies supervised by the Board of

Governors and bank holding companies described in subsection (a), that include—

3 (i) a contingent capital requirement;

4 (ii) enhanced public disclosures;

5 (iii) short-term debt limits; and

6 (iv) such other prudential standards

7 as the Board or Governors, on its own or

8 pursuant to a recommendation made by

9 the Council in accordance with section 115,

10 determines are appropriate.

11 (2) STANDARDS FOR FOREIGN FINANCIAL COM-

12 PANIES.—In applying the standards set forth in

13 paragraph (1) to any foreign nonbank financial com-

pany supervised by the Board of Governors or for-

15 eign-based bank holding company, the Board of Gov-

16 errors shall—

17 (A) give due regard to the principles of na-

18 tional treatment and equality of competitive op-

19 opportunity; and

20 (B) take into account the extent to which

21 the foreign financial company is subject on a

22 consolidated basis to home country standards

23 that are comparable to those applied to finan-

24 cial companies in the United States.

1 (3) CONSIDERATIONS.—In prescribing pruden-
2 tial standards under paragraph (1), the Board of
3 Governors shall—

4 (A) take into account differences among
5 nonbank financial companies supervised by the
6 Board of Governors and bank holding compa-
7 nies described in subsection (a), based on—

8 (i) the factors described in subsections
9 (a) and (b) of section 113;

10 (ii) whether the company owns an in-
11 sured depository institution;

12 (iii) nonfinancial activities and affili-
13 ations of the company; and

14 (iv) any other risk-related factors that
15 the Board of Governors determines appro-
16 priate;

17 (B) to the extent possible, ensure that
18 small changes in the factors listed in sub-
19 sections (a) and (b) of section 113 would not
20 result in sharp, discontinuous changes in the
21 prudential standards established under para-
22 graph (1) of this subsection;

23 (C) take into account any recommenda-
24 tions of the Council under section 115; and

1 (D) adapt the required standards as appro-
2 priate in light of any predominant line of busi-
3 ness of such company, including assets under
4 management or other activities for which par-
5 ticular standards may not be appropriate.

6 (4) CONSULTATION.—Before imposing pruden-
7 tial standards or any other requirements pursuant to
8 this section, including notices of deficiencies in reso-
9 lution plans and more stringent requirements or di-
10 vestiture orders resulting from such notices, that are
11 likely to have a significant impact on a functionally
12 regulated subsidiary or depository institution sub-
13 sidiary of a nonbank financial company supervised
14 by the Board of Governors or a bank holding com-
15 pany described in subsection (a), the Board of Gov-
16 ernors shall consult with each Council member that
17 primarily supervises any such subsidiary with re-
18 spect to any such standard or requirement.

19 (5) REPORT.—The Board of Governors shall
20 submit an annual report to Congress regarding the
21 implementation of the prudential standards required
22 pursuant to paragraph (1), including the use of such
23 standards to mitigate risks to the financial stability
24 of the United States.

25 (c) CONTINGENT CAPITAL.—

1 (1) IN GENERAL.—Subsequent to submission by
2 the Council of a report to Congress under section
3 115(c), the Board of Governors may issue regula-
4 tions that require each nonbank financial company
5 supervised by the Board of Governors and bank
6 holding companies described in subsection (a) to
7 maintain a minimum amount of contingent capital
8 that is convertible to equity in times of financial
9 stress.

10 (2) FACTORS TO CONSIDER.—In issuing regula-
11 tions under this subsection, the Board of Governors
12 shall consider—

13 (A) the results of the study undertaken by
14 the Council, and any recommendations of the
15 Council, under section 115(c);

16 (B) an appropriate transition period for
17 implementation of contingent capital under this
18 subsection;

19 (C) the factors described in subsection
20 (b)(3)(A);

21 (D) capital requirements applicable to the
22 nonbank financial company supervised by the
23 Board of Governors or a bank holding company
24 described in subsection (a), and subsidiaries
25 thereof; and

1 (E) any other factor that the Board of
2 Governors deems appropriate.

3 (d) RESOLUTION PLAN AND CREDIT EXPOSURE RE-
4 PORTS.—

5 (1) RESOLUTION PLAN.—The Board of Gov-
6 ernors shall require each nonbank financial company
7 supervised by the Board of Governors and bank
8 holding companies described in subsection (a) to re-
9 port periodically to the Board of Governors, the
10 Council, and the Corporation the plan of such com-
11 pany for rapid and orderly resolution in the event of
12 material financial distress or failure, which shall in-
13 clude—

14 (A) information regarding the manner and
15 extent to which any insured depository institu-
16 tion affiliated with the company is adequately
17 protected from risks arising from the activities
18 of any nonbank subsidiaries of the company;

19 (B) full descriptions of the ownership
20 structure, assets, liabilities, and contractual ob-
21 ligations of the company;

22 (C) identification of the cross-guarantees
23 tied to different securities, identification of
24 major counterparties, and a process for deter-

1 mining to whom the collateral of the company
2 is pledged; and

3 (D) any other information that the Board
4 of Governors and the Corporation jointly re-
5 quire by rule or order.

6 (2) CREDIT EXPOSURE REPORT.—The Board of
7 Governors shall require each nonbank financial com-
8 pany supervised by the Board of Governors and
9 bank holding companies described in subsection (a)
10 to report periodically to the Board of Governors, the
11 Council, and the Corporation on—

12 (A) the nature and extent to which the
13 company has credit exposure to other signifi-
14 cant nonbank financial companies and signifi-
15 cant bank holding companies; and

16 (B) the nature and extent to which other
17 significant nonbank financial companies and
18 significant bank holding companies have credit
19 exposure to that company.

20 (3) REVIEW.—The Board of Governors and the
21 Corporation shall review the information provided in
22 accordance with this subsection by each nonbank fi-
23 nancial company supervised by the Board of Gov-
24 ernors and bank holding company described in sub-
25 section (a).

1 (4) NOTICE OF DEFICIENCIES.—If the Board of
2 Governors and the Corporation jointly determine,
3 based on their review under paragraph (3), that the
4 resolution plan of a nonbank financial company su-
5 pervised by the Board of Governors or a bank hold-
6 ing company described in subsection (a) is not cred-
7 ible or would not facilitate an orderly resolution of
8 the company under title 11, United States Code—

9 (A) the Board of Governors and the Cor-
10 poration shall notify the company, as applica-
11 ble, of the deficiencies in the resolution plan;
12 and

13 (B) the company shall resubmit the resolu-
14 tion plan within a timeframe determined by the
15 Board of Governors and the Corporation, with
16 revisions demonstrating that the plan is credible
17 and would result in an orderly resolution under
18 title 11, United States Code, including any pro-
19 posed changes in business operations and cor-
20 porate structure to facilitate implementation of
21 the plan.

22 (5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

23 (A) IN GENERAL.—If a nonbank financial
24 company supervised by the Board of Governors
25 or a bank holding company described in sub-

1 section (a) fails to timely resubmit the resolu-
2 tion plan as required under paragraph (4), with
3 such revisions as are required under subpara-
4 graph (B), the Board of Governors and the
5 Corporation may jointly impose more stringent
6 capital, leverage, or liquidity requirements, or
7 restrictions on the growth, activities, or oper-
8 ations of the company, or any subsidiary there-
9 of, until such time as the company resubmits a
10 plan that remedies the deficiencies.

11 (B) DIVESTITURE.—The Board of Gov-
12 ernors and the Corporation, in consultation
13 with the Council, may direct a nonbank finan-
14 cial company supervised by the Board of Gov-
15 ernors or a bank holding company described in
16 subsection (a), by order, to divest certain assets
17 or operations identified by the Board of Gov-
18 ernors and the Corporation, to facilitate an or-
19 derly resolution of such company under title 11,
20 United States Code, in the event of the failure
21 of such company, in any case in which—

22 (i) the Board of Governors and the
23 Corporation have jointly imposed more
24 stringent requirements on the company
25 pursuant to subparagraph (A); and

1 (ii) the company has failed, within the
2 2-year period beginning on the date of the
3 imposition of such requirements under sub-
4 paragraph (A), to resubmit the resolution
5 plan with such revisions as were required
6 under paragraph (4)(B).

7 (6) NO LIMITING EFFECT.—A resolution plan
8 submitted in accordance with this subsection shall
9 not be binding on a bankruptcy court, a receiver ap-
10 pointed under title II, or any other authority that is
11 authorized or required to resolve the nonbank finan-
12 cial company supervised by the Board, any bank
13 holding company, or any subsidiary or affiliate of
14 the foregoing.

15 (7) NO PRIVATE RIGHT OF ACTION.—No pri-
16 vate right of action may be based on any resolution
17 plan submitted in accordance with this subsection.

18 (8) RULES.—Not later than 18 months after
19 the date of enactment of this Act, the Board of Gov-
20 ernors and the Corporation shall jointly issue final
21 rules implementing this subsection.

22 (e) CONCENTRATION LIMITS.—

23 (1) STANDARDS.—In order to limit the risks
24 that the failure of any individual company could
25 pose to a nonbank financial company supervised by

1 the Board of Governors or a bank holding company
2 described in subsection (a), the Board of Governors,
3 by regulation, shall prescribe standards that limit
4 such risks.

5 (2) LIMITATION ON CREDIT EXPOSURE.—The
6 regulations prescribed by the Board of Governors
7 under paragraph (1) shall prohibit each nonbank fi-
8 nancial company supervised by the Board of Gov-
9 ernors and bank holding company described in sub-
10 section (a) from having credit exposure to any unaf-
11 filiated company that exceeds 25 percent of the cap-
12 ital stock and surplus (or such lower amount as the
13 Board of Governors may determine by regulation to
14 be necessary to mitigate risks to the financial sta-
15 bility of the United States) of the company.

16 (3) CREDIT EXPOSURE.—For purposes of para-
17 graph (2), “credit exposure” to a company means—

18 (A) all extensions of credit to the company,
19 including loans, deposits, and lines of credit;

20 (B) all repurchase agreements and reverse
21 repurchase agreements with the company, and
22 all securities borrowing and lending trans-
23 actions with the company, to the extent that
24 such transactions create credit exposure for the
25 nonbank financial company supervised by the

1 Board of Governors or a bank holding company
2 described in subsection (a);

3 (C) all guarantees, acceptances, or letters
4 of credit (including endorsement or standby let-
5 ters of credit) issued on behalf of the company;

6 (D) all purchases of or investment in secu-
7 rities issued by the company;

8 (E) counterparty credit exposure to the
9 company in connection with a derivative trans-
10 action between the nonbank financial company
11 supervised by the Board of Governors or a bank
12 holding company described in subsection (a)
13 and the company; and

14 (F) any other similar transactions that the
15 Board of Governors, by regulation, determines
16 to be a credit exposure for purposes of this sec-
17 tion.

18 (4) ATTRIBUTION RULE.—For purposes of this
19 subsection, any transaction by a nonbank financial
20 company supervised by the Board of Governors or a
21 bank holding company described in subsection (a)
22 with any person is a transaction with a company, to
23 the extent that the proceeds of the transaction are
24 used for the benefit of, or transferred to, that com-
25 pany.

1 (5) RULEMAKING.—The Board of Governors
2 may issue such regulations and orders, including
3 definitions consistent with this section, as may be
4 necessary to administer and carry out this sub-
5 section.

6 (6) EXEMPTIONS.—This subsection shall not
7 apply to any Federal home loan bank. The Board of
8 Governors may, by regulation or order, exempt
9 transactions, in whole or in part, from the definition
10 of the term “credit exposure” for purposes of this
11 subsection, if the Board of Governors finds that the
12 exemption is in the public interest and is consistent
13 with the purpose of this subsection.

14 (7) TRANSITION PERIOD.—

15 (A) IN GENERAL.—This subsection and
16 any regulations and orders of the Board of Gov-
17 ernors under this subsection shall not be effec-
18 tive until 3 years after the date of enactment
19 of this Act.

20 (B) EXTENSION AUTHORIZED.—The
21 Board of Governors may extend the period
22 specified in subparagraph (A) for not longer
23 than an additional 2 years.

24 (f) ENHANCED PUBLIC DISCLOSURES.—The Board
25 of Governors may prescribe, by regulation, periodic public

1 disclosures by nonbank financial companies supervised by
2 the Board of Governors and bank holding companies de-
3 scribed in subsection (a) in order to support market eval-
4 uation of the risk profile, capital adequacy, and risk man-
5 agement capabilities thereof.

6 (g) SHORT-TERM DEBT LIMITS.—

7 (1) IN GENERAL.—In order to mitigate the
8 risks that an over-accumulation of short-term debt
9 could pose to financial companies and to the stability
10 of the United States financial system, the Board of
11 Governors may, by regulation, prescribe a limit on
12 the amount of short-term debt, including off-balance
13 sheet exposures, that may be accumulated by any
14 bank holding company described in subsection (a)
15 and any nonbank financial company supervised by
16 the Board of Governors.

17 (2) BASIS OF LIMIT.—Any limit prescribed
18 under paragraph (1) shall be based on the short-
19 term debt of the company described in paragraph
20 (1) as a percentage of capital stock and surplus of
21 the company or on such other measure as the Board
22 of Governors considers appropriate.

23 (3) SHORT-TERM DEBT DEFINED.—For pur-
24 poses of this subsection, the term “short-term debt”
25 means such liabilities with short-dated maturity that

1 the Board of Governors identifies, by regulation, ex-
2 cept that such term does not include insured depos-
3 its.

4 (4) RULEMAKING AUTHORITY.—In addition to
5 prescribing regulations under paragraphs (1) and
6 (3), the Board of Governors may prescribe such reg-
7 ulations, including definitions consistent with this
8 subsection, and issue such orders, as may be nec-
9 essary to carry out this subsection.

10 (5) AUTHORITY TO ISSUE EXEMPTIONS AND
11 ADJUSTMENTS.—Notwithstanding the Bank Holding
12 Company Act of 1956 (12 U.S.C. 1841 et seq.), the
13 Board of Governors may, if it determines such ac-
14 tion is necessary to ensure appropriate heightened
15 prudential supervision, with respect to a company
16 described in paragraph (1) that does not control an
17 insured depository institution, issue to such company
18 an exemption from or adjustment to the limit pre-
19 scribed under paragraph (1).

20 (h) RISK COMMITTEE.—

21 (1) NONBANK FINANCIAL COMPANIES SUPER-
22 VISED BY THE BOARD OF GOVERNORS.—The Board
23 of Governors shall require each nonbank financial
24 company supervised by the Board of Governors that
25 is a publicly traded company to establish a risk com-

1 mittee, as set forth in paragraph (3), not later than
2 1 year after the date of receipt of a notice of final
3 determination under section 113(d)(3) with respect
4 to such nonbank financial company supervised by
5 the Board of Governors.

6 (2) CERTAIN BANK HOLDING COMPANIES.—

7 (A) MANDATORY REGULATIONS.—The
8 Board of Governors shall issue regulations re-
9 quiring each bank holding company that is a
10 publicly traded company and that has total con-
11 solidated assets of not less than
12 \$10,000,000,000 to establish a risk committee,
13 as set forth in paragraph (3).

14 (B) PERMISSIVE REGULATIONS.—The
15 Board of Governors may require each bank
16 holding company that is a publicly traded com-
17 pany and that has total consolidated assets of
18 less than \$10,000,000,000 to establish a risk
19 committee, as set forth in paragraph (3), as de-
20 termined necessary or appropriate by the Board
21 of Governors to promote sound risk manage-
22 ment practices.

23 (3) RISK COMMITTEE.—A risk committee re-
24 quired by this subsection shall—

1 (A) be responsible for the oversight of the
2 enterprise-wide risk management practices of
3 the nonbank financial company supervised by
4 the Board of Governors or bank holding com-
5 pany described in subsection (a), as applicable;

6 (B) include such number of independent
7 directors as the Board of Governors may deter-
8 mine appropriate, based on the nature of oper-
9 ations, size of assets, and other appropriate cri-
10 teria related to the nonbank financial company
11 supervised by the Board of Governors or a bank
12 holding company described in subsection (a), as
13 applicable; and

14 (C) include at least 1 risk management ex-
15 pert having experience in identifying, assessing,
16 and managing risk exposures of large, complex
17 firms.

18 (4) RULEMAKING.—The Board of Governors
19 shall issue final rules to carry out this subsection,
20 not later than 1 year after the transfer date, to take
21 effect not later than 15 months after the transfer
22 date.

23 (i) STRESS TESTS.—

24 (1) BY THE BOARD OF GOVERNORS.—

1 (A) ANNUAL TESTS REQUIRED.—The
2 Board of Governors, in coordination with the
3 appropriate primary financial regulatory agen-
4 cies and the Federal Insurance Office, shall
5 conduct annual analyses in which nonbank fi-
6 nancial companies supervised by the Board of
7 Governors and bank holding companies de-
8 scribed in subsection (a) are subject to evalua-
9 tion of whether such companies have the cap-
10 ital, on a total consolidated basis, necessary to
11 absorb losses as a result of adverse economic
12 conditions.

13 (B) TEST PARAMETERS AND CON-
14 SEQUENCES.—The Board of Governors—

15 (i) shall provide for at least 3 dif-
16 ferent sets of conditions under which the
17 evaluation required by this subsection shall
18 be conducted, including baseline, adverse,
19 and severely adverse;

20 (ii) may require the tests described in
21 subparagraph (A) at bank holding compa-
22 nies and nonbank financial companies, in
23 addition to those for which annual tests
24 are required under subparagraph (A);

1 (iii) may develop and apply such other
2 analytic techniques as are necessary to
3 identify, measure, and monitor risks to the
4 financial stability of the United States;

5 (iv) shall require the companies de-
6 scribed in subparagraph (A) to update
7 their resolution plans required under sub-
8 section (d)(1), as the Board of Governors
9 determines appropriate, based on the re-
10 sults of the analyses; and

11 (v) shall publish a summary of the re-
12 sults of the tests required under subpara-
13 graph (A) or clause (ii) of this subpara-
14 graph.

15 (2) BY THE COMPANY.—

16 (A) REQUIREMENT.—A nonbank financial
17 company supervised by the Board of Governors
18 and a bank holding company described in sub-
19 section (a) shall conduct semiannual stress
20 tests. All other financial companies that have
21 total consolidated assets of more than
22 \$10,000,000,000 and are regulated by a pri-
23 mary Federal financial regulatory agency shall
24 conduct annual stress tests. The tests required
25 under this subparagraph shall be conducted in

1 accordance with the regulations prescribed
2 under subparagraph (C).

3 (B) REPORT.—A company required to con-
4 duct stress tests under subparagraph (A) shall
5 submit a report to the Board of Governors and
6 to its primary financial regulatory agency at
7 such time, in such form, and containing such
8 information as the primary financial regulatory
9 agency shall require.

10 (C) REGULATIONS.—Each Federal pri-
11 mary financial regulatory agency, in coordina-
12 tion with the Board of Governors and the Fed-
13 eral Insurance Office, shall issue consistent and
14 comparable regulations to implement this para-
15 graph that shall—

16 (i) define the term “stress test” for
17 purposes of this paragraph;

18 (ii) establish methodologies for the
19 conduct of stress tests required by this
20 paragraph that shall provide for at least 3
21 different sets of conditions, including base-
22 line, adverse, and severely adverse;

23 (iii) establish the form and content of
24 the report required by subparagraph (B);
25 and

1 (iv) require companies subject to this
2 paragraph to publish a summary of the re-
3 sults of the required quarterly stress tests.

4 (j) LEVERAGE LIMITATION.—

5 (1) REQUIREMENT.—The Board of Governors
6 shall require a bank holding company with total con-
7 solidated assets equal to or greater than
8 \$50,000,000,000 or a nonbank financial company
9 supervised by the Board of Governors to maintain a
10 debt to equity ratio of no more than 15 to 1, upon
11 a determination by the Council that such company
12 poses a grave threat to the financial stability of the
13 United States and that the imposition of such re-
14 quirement is necessary to mitigate the risk that such
15 company poses to the financial stability of the
16 United States. Nothing in this paragraph shall apply
17 to a Federal home loan bank.

18 (2) CONSIDERATIONS.—In making a determina-
19 tion under this subsection, the Council shall consider
20 the factors described in subsections (a) and (b) of
21 section 113 and any other risk-related factors that
22 the Council deems appropriate.

23 (3) REGULATIONS.—The Board of Governors
24 shall promulgate regulations to establish procedures

1 and timelines for complying with the requirements of
2 this subsection.

3 (k) INCLUSION OF OFF-BALANCE-SHEET ACTIVITIES
4 IN COMPUTING CAPITAL REQUIREMENTS.—

5 (1) IN GENERAL.—In the case of any bank
6 holding company described in subsection (a) or
7 nonbank financial company supervised by the Board
8 of Governors, the computation of capital for pur-
9 poses of meeting capital requirements shall take into
10 account any off-balance-sheet activities of the com-
11 pany.

12 (2) EXEMPTIONS.—If the appropriate Federal
13 banking agencies determine that an exemption from
14 the requirement under paragraph (1) is appropriate,
15 the Federal banking agencies may exempt a com-
16 pany, or any transaction or transactions engaged in
17 by such company, from the requirements of para-
18 graph (1).

19 (3) OFF-BALANCE-SHEET ACTIVITIES DE-
20 FINED.—For purposes of this subsection, the term
21 “off-balance-sheet activities” means an existing li-
22 ability of a company that is not currently a balance
23 sheet liability, but may become one upon the hap-
24 pening of some future event, including the following

1 transactions, to the extent that they may create a li-
2 ability:

3 (A) Direct credit substitutes in which a
4 bank substitutes its own credit for a third
5 party, including standby letters of credit.

6 (B) Irrevocable letters of credit that guar-
7 antee repayment of commercial paper or tax-ex-
8 empt securities.

9 (C) Risk participations in bankers' accept-
10 ances.

11 (D) Sale and repurchase agreements.

12 (E) Asset sales with recourse against the
13 seller.

14 (F) Interest rate swaps.

15 (G) Credit swaps.

16 (H) Commodities contracts.

17 (I) Forward contracts.

18 (J) Securities contracts.

19 (K) Such other activities or transactions as
20 the Federal banking agencies may, by rule, de-
21 fine.

22 **SEC. 166. EARLY REMEDIATION REQUIREMENTS.**

23 (a) IN GENERAL.—The Board of Governors, in con-
24 sultation with the Council and the Corporation, shall pre-
25 scribe regulations establishing requirements to provide for

1 the early remediation of financial distress of a nonbank
2 financial company supervised by the Board of Governors
3 or a bank holding company described in section 165(a),
4 except that nothing in this subsection authorizes the provi-
5 sion of financial assistance from the Federal Government.

6 (b) PURPOSE OF THE EARLY REMEDIATION RE-
7 QUIREMENTS.—The purpose of the early remediation re-
8 quirements under subsection (a) shall be to establish a se-
9 ries of specific remedial actions to be taken by a nonbank
10 financial company supervised by the Board of Governors
11 or a bank holding company described in section 165(a)
12 that is experiencing increasing financial distress, in order
13 to minimize the probability that the company will become
14 insolvent and the potential harm of such insolvency to the
15 financial stability of the United States.

16 (c) REMEDIATION REQUIREMENTS.—The regulations
17 prescribed by the Board of Governors under subsection (a)
18 shall—

19 (1) define measures of the financial condition of
20 the company, including regulatory capital, liquidity
21 measures, and other forward-looking indicators; and

22 (2) establish requirements that increase in
23 stringency as the financial condition of the company
24 declines, including—

1 (A) requirements in the initial stages of fi-
2 nancial decline, including limits on capital dis-
3 tributions, acquisitions, and asset growth; and

4 (B) requirements at later stages of finan-
5 cial decline, including a capital restoration plan
6 and capital-raising requirements, limits on
7 transactions with affiliates, management
8 changes, and asset sales.

9 **SEC. 167. AFFILIATIONS.**

10 (a) AFFILIATIONS.—Nothing in this subtitle shall be
11 construed to require a nonbank financial company super-
12 vised by the Board of Governors, or a company that con-
13 trols a nonbank financial company supervised by the
14 Board of Governors, to conform the activities thereof to
15 the requirements of section 4 of the Bank Holding Com-
16 pany Act of 1956 (12 U.S.C. 1843).

17 (b) REQUIREMENT.—

18 (1) IN GENERAL.—

19 (A) BOARD AUTHORITY.—If a nonbank fi-
20 nancial company supervised by the Board of
21 Governors conducts activities other than those
22 that are determined to be financial in nature or
23 incidental thereto under section 4(k) of the
24 Bank Holding Company Act of 1956, the Board
25 of Governors may require such company to es-

1 tablish and conduct all or a portion of such ac-
2 tivities that are determined to be financial in
3 nature or incidental thereto in or through an
4 intermediate holding company established pur-
5 suant to regulation of the Board of Governors,
6 not later than 90 days (or such longer period
7 as the Board of Governors may deem appro-
8 priate) after the date on which the nonbank fi-
9 nancial company supervised by the Board of
10 Governors is notified of the determination of
11 the Board of Governors under this section.

12 (B) NECESSARY ACTIONS.—Notwith-
13 standing subparagraph (A), the Board of Gov-
14 ernors shall require a nonbank financial com-
15 pany supervised by the Board of Governors to
16 establish an intermediate holding company if
17 the Board of Governors makes a determination
18 that the establishment of such intermediate
19 holding company is necessary to—

20 (i) appropriately supervise activities
21 that are determined to be financial in na-
22 ture or incidental thereto; or

23 (ii) to ensure that supervision by the
24 Board of Governors does not extend to the

1 commercial activities of such nonbank fi-
2 nancial company.

3 (2) INTERNAL FINANCIAL ACTIVITIES.—For
4 purposes of this subsection, activities that are deter-
5 mined to be financial in nature or incidental thereto
6 under section 4(k) of the Bank Holding Company
7 Act of 1956, as described in paragraph (1), shall not
8 include internal financial activities, including inter-
9 nal treasury, investment, and employee benefit func-
10 tions. With respect to any internal financial activity
11 engaged in for the company or an affiliate and a
12 non-affiliate of such company during the year prior
13 to the date of enactment of this Act, such company
14 (or an affiliate that is not an intermediate holding
15 company or subsidiary of an intermediate holding
16 company) may continue to engage in such activity,
17 as long as not less than 2/3 of the assets or 2/3 of
18 the revenues generated from the activity are from or
19 attributable to such company or an affiliate, subject
20 to review by the Board of Governors, to determine
21 whether engaging in such activity presents undue
22 risk to such company or to the financial stability of
23 the United States.

24 (3) SOURCE OF STRENGTH.—A company that
25 directly or indirectly controls an intermediate hold-

1 ing company established under this section shall
2 serve as a source of strength to its subsidiary inter-
3 mediate holding company.

4 (4) PARENT COMPANY REPORTS.—The Board
5 of Governors may, from time to time, require reports
6 under oath from a company that controls an inter-
7 mediate holding company, and from the appropriate
8 officers or directors of such company, solely for pur-
9 poses of ensuring compliance with the provisions of
10 this section, including assessing the ability of the
11 company to serve as a source of strength to its sub-
12 sidiary intermediate holding company pursuant to
13 paragraph (3) and enforcing such compliance.

14 (5) LIMITED PARENT COMPANY ENFORCE-
15 MENT.—

16 (A) IN GENERAL.—In addition to any
17 other authority of the Board of Governors, the
18 Board of Governors may enforce compliance
19 with the provisions of this subsection that are
20 applicable to any company described in para-
21 graph (1) that controls an intermediate holding
22 company under section 8 of the Federal Deposit
23 Insurance Act, and such company shall be sub-
24 ject to such section (solely for such purposes) in

1 the same manner and to the same extent as if
2 such company were a bank holding company.

3 (B) APPLICATION OF OTHER ACT.—Any
4 violation of this subsection by any company
5 that controls an intermediate holding company
6 may also be treated as a violation of the Fed-
7 eral Deposit Insurance Act for purposes of sub-
8 paragraph (A).

9 (C) NO EFFECT ON OTHER AUTHORITY.—
10 No provision of this paragraph shall be con-
11 strued as limiting any authority of the Board of
12 Governors or any other Federal agency under
13 any other provision of law.

14 (c) REGULATIONS.—The Board of Governors—

15 (1) shall promulgate regulations to establish the
16 criteria for determining whether to require a
17 nonbank financial company supervised by the Board
18 of Governors to establish an intermediate holding
19 company under subsection (b); and

20 (2) may promulgate regulations to establish any
21 restrictions or limitations on transactions between
22 an intermediate holding company or a nonbank fi-
23 nancial company supervised by the Board of Gov-
24 ernors and its affiliates, as necessary to prevent un-
25 safe and unsound practices in connection with trans-

1 actions between such company, or any subsidiary
2 thereof, and its parent company or affiliates that are
3 not subsidiaries of such company, except that such
4 regulations shall not restrict or limit any transaction
5 in connection with the bona fide acquisition or lease
6 by an unaffiliated person of assets, goods, or serv-
7 ices.

8 **SEC. 168. REGULATIONS.**

9 The Board of Governors shall have authority to issue
10 regulations to implement subtitles A and C and the
11 amendments made thereunder. Except as otherwise speci-
12 fied in subtitle A or C, not later than 18 months after
13 the effective date of this Act, the Board of Governors shall
14 issue final regulations to implement subtitles A and C, and
15 the amendments made thereunder.

16 **SEC. 169. AVOIDING DUPLICATION.**

17 The Board of Governors shall take any action that
18 the Board of Governors deems appropriate to avoid impos-
19 ing requirements under this subtitle that are duplicative
20 of requirements applicable to bank holding companies and
21 nonbank financial companies under other provisions of
22 law.

23 **SEC. 170. SAFE HARBOR.**

24 (a) REGULATIONS.—The Board of Governors shall
25 promulgate regulations on behalf of, and in consultation

1 with, the Council setting forth the criteria for exempting
2 certain types or classes of U.S. nonbank financial compa-
3 nies or foreign nonbank financial companies from super-
4 vision by the Board of Governors.

5 (b) CONSIDERATIONS.—In developing the criteria
6 under subsection (a), the Board of Governors shall take
7 into account the factors for consideration described in sub-
8 sections (a) and (b) of section 113 in determining whether
9 a U.S. nonbank financial company or foreign nonbank fi-
10 nancial company shall be supervised by the Board of Gov-
11 ernors.

12 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
13 tion shall be construed to require supervision by the Board
14 of Governors of a U.S. nonbank financial company or for-
15 eign nonbank financial company, if such company does not
16 meet the criteria for exemption established under sub-
17 section (a).

18 (d) REVISIONS.—

19 (1) IN GENERAL.—The Board of Governors
20 shall, in consultation with the Council, review the
21 regulations promulgated under subsection (a), not
22 less frequently than every 5 years, and based upon
23 the review, the Board of Governors may revise such
24 regulations on behalf of, and in consultation with,

1 the Council to update as necessary the criteria set
2 forth in such regulations.

3 (2) TRANSITION PERIOD.—No revisions under
4 paragraph (1) shall take effect before the end of the
5 2-year period after the date of publication of such
6 revisions in final form.

7 (e) REPORT.—The Chairperson of the Board of Gov-
8 ernors and the Chairperson of the Council shall submit
9 a joint report to the Committee on Banking, Housing, and
10 Urban Affairs of the Senate and the Committee on Finan-
11 cial Services of the House of Representatives not later
12 than 30 days after the date of the issuance in final form
13 of regulations under subsection (a), or any subsequent re-
14 vision to such regulations under subsection (d), as applica-
15 ble. Such report shall include, at a minimum, the rationale
16 for exemption and empirical evidence to support the cri-
17 teria for exemption.

18 **SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIRE-**
19 **MENTS.**

20 (a) DEFINITIONS.—For purposes of this section, the
21 following definitions shall apply:

22 (1) GENERALLY APPLICABLE LEVERAGE CAP-
23 ITAL REQUIREMENTS.—The term “generally applica-
24 ble leverage capital requirements” means—

1 (A) the minimum ratios of tier 1 capital to
2 average total assets, as established by the ap-
3 propriate Federal banking agencies to apply to
4 insured depository institutions under the
5 prompt corrective action regulations imple-
6 menting section 38 of the Federal Deposit In-
7 surance Act, regardless of total consolidated
8 asset size or foreign financial exposure; and

9 (B) includes the regulatory capital compo-
10 nents in the numerator of that capital require-
11 ment, average total assets in the denominator
12 of that capital requirement, and the required
13 ratio of the numerator to the denominator.

14 (2) GENERALLY APPLICABLE RISK-BASED CAP-
15 ITAL REQUIREMENTS.—The term “generally applica-
16 ble risk-based capital requirements” means—

17 (A) the risk-based capital requirements, as
18 established by the appropriate Federal banking
19 agencies to apply to insured depository institu-
20 tions under the prompt corrective action regula-
21 tions implementing section 38 of the Federal
22 Deposit Insurance Act, regardless of total con-
23 solidated asset size or foreign financial expo-
24 sure; and

1 (B) includes the regulatory capital compo-
2 nents in the numerator of those capital require-
3 ments, the risk-weighted assets in the denomi-
4 nator of those capital requirements, and the re-
5 quired ratio of the numerator to the denomi-
6 nator.

7 (3) DEFINITION OF DEPOSITORY INSTITUTION
8 HOLDING COMPANY.—The term “depository institu-
9 tion holding company” means a bank holding com-
10 pany or a savings and loan holding company (as
11 those terms are defined in section 3 of the Federal
12 Deposit Insurance Act) that is organized in the
13 United States, including any bank or savings and
14 loan holding company that is owned or controlled by
15 a foreign organization, but does not include the for-
16 eign organization.

17 (b) MINIMUM CAPITAL REQUIREMENTS.—

18 (1) MINIMUM LEVERAGE CAPITAL REQUIRE-
19 MENTS.—The appropriate Federal banking agencies
20 shall establish minimum leverage capital require-
21 ments on a consolidated basis for insured depository
22 institutions, depository institution holding compa-
23 nies, and nonbank financial companies supervised by
24 the Board of Governors. The minimum leverage cap-
25 ital requirements established under this paragraph

1 shall not be less than the generally applicable lever-
2 age capital requirements, which shall serve as a floor
3 for any capital requirements that the agency may re-
4 quire, nor quantitatively lower than the generally ap-
5 plicable leverage capital requirements that were in
6 effect for insured depository institutions as of the
7 date of enactment of this Act.

8 (2) MINIMUM RISK-BASED CAPITAL REQUIRE-
9 MENTS.—The appropriate Federal banking agencies
10 shall establish minimum risk-based capital require-
11 ments on a consolidated basis for insured depository
12 institutions, depository institution holding compa-
13 nies, and nonbank financial companies supervised by
14 the Board of Governors. The minimum risk-based
15 capital requirements established under this para-
16 graph shall not be less than the generally applicable
17 risk-based capital requirements, which shall serve as
18 a floor for any capital requirements that the agency
19 may require, nor quantitatively lower than the gen-
20 erally applicable risk-based capital requirements that
21 were in effect for insured depository institutions as
22 of the date of enactment of this Act.

23 (3) INVESTMENTS IN FINANCIAL SUBSIDI-
24 ARIES.—For purposes of this section, investments in
25 financial subsidiaries that insured depository institu-

1 tions are required to deduct from regulatory capital
2 under section 5136A of the Revised Statutes of the
3 United States or section 46(a)(2) of the Federal De-
4 posit Insurance Act need not be deducted from regu-
5 latory capital by depository institution holding com-
6 panies or nonbank financial companies supervised by
7 the Board of Governors, unless such capital deduc-
8 tion is required by the Board of Governors or the
9 primary financial regulatory agency in the case of
10 nonbank financial companies supervised by the
11 Board of Governors.

12 (4) EFFECTIVE DATES AND PHASE-IN PERI-
13 ODS.—

14 (A) DEBT OR EQUITY INSTRUMENTS ON
15 OR AFTER MAY 19, 2010.—For debt or equity in-
16 struments issued on or after May 19, 2010, by
17 depository institution holding companies or by
18 nonbank financial companies supervised by the
19 Board of Governors, this section shall be
20 deemed to have become effective as of May 19,
21 2010.

22 (B) DEBT OR EQUITY INSTRUMENTS
23 ISSUED BEFORE MAY 19, 2010.—For debt or eq-
24 uity instruments issued before May 19, 2010,
25 by depository institution holding companies or

1 by nonbank financial companies supervised by
2 the Board of Governors, any regulatory capital
3 deductions required under this section shall be
4 phased in incrementally over a period of 3
5 years, with the phase-in period to begin on Jan-
6 uary 1, 2013, except as set forth in subpara-
7 graph (C).

8 (C) DEBT OR EQUITY INSTRUMENTS OF
9 SMALLER INSTITUTIONS.—For debt or equity
10 instruments issued before May 19, 2010, by de-
11 pository institution holding companies with
12 total consolidated assets of less than
13 \$15,000,000,000 as of December 31, 2009, and
14 by organizations that were mutual holding com-
15 panies on May 19, 2010, the capital deductions
16 that would be required for other institutions
17 under this section are not required as a result
18 of this section.

19 (D) DEPOSITORY INSTITUTION HOLDING
20 COMPANIES NOT PREVIOUSLY SUPERVISED BY
21 THE BOARD OF GOVERNORS.—For any deposi-
22 tory institution holding company that was not
23 supervised by the Board of Governors as of
24 May 19, 2010, the requirements of this section,
25 except as set forth in subparagraphs (A) and

1 (B), shall be effective 5 years after the date of
2 enactment of this Act

3 (E) CERTAIN BANK HOLDING COMPANY
4 SUBSIDIARIES OF FOREIGN BANKING ORGANIZA-
5 TIONS .—For bank holding company subsidi-
6 aries of foreign banking organizations that have
7 relied on Supervision and Regulation Letter
8 SR-01-1 issued by the Board of Governors (as
9 in effect on May 19, 2010), the requirements of
10 this section, except as set forth in subparagraph
11 (A), shall be effective 5 years after the date of
12 enactment of this Act.

13 (5) EXCEPTIONS.—This section shall not apply
14 to—

15 (A) debt or equity instruments issued to
16 the United States or any agency or instrumen-
17 tality thereof pursuant to the Emergency Eco-
18 nomic Stabilization Act of 2008, and prior to
19 October 4, 2010;

20 (B) any Federal home loan bank; or

21 (C) any small bank holding company that
22 is subject to the Small Bank Holding Company
23 Policy Statement of the Board of Governors, as
24 in effect on May 19, 2010.

1 (6) STUDY AND REPORT ON SMALL INSTITU-
2 TION ACCESS TO CAPITAL.—

3 (A) STUDY REQUIRED.—The Comptroller
4 General of the United States, after consultation
5 with the Federal banking agencies, shall con-
6 duct a study of access to capital by smaller in-
7 sured depository institutions.

8 (B) SCOPE.—For purposes of this study
9 required by subparagraph (A), the term “small-
10 er insured depository institution” means an in-
11 sured depository institution with total consoli-
12 dated assets of \$5,000,000,000 or less.

13 (C) REPORT TO CONGRESS.—Not later
14 than 18 months after the date of enactment of
15 this Act, the Comptroller General of the United
16 States shall submit to the Committee on Bank-
17 ing, Housing, and Urban Affairs of the Senate
18 and the Committee on Financial Services of the
19 House of Representatives a report summarizing
20 the results of the study conducted under sub-
21 paragraph (A), together with any recommenda-
22 tions for legislative or regulatory action that
23 would enhance the access to capital of smaller
24 insured depository institutions, in a manner

1 that is consistent with safe and sound banking
2 operations.

3 (7) CAPITAL REQUIREMENTS TO ADDRESS AC-
4 TIVITIES THAT POSE RISKS TO THE FINANCIAL SYS-
5 TEM.—

6 (A) IN GENERAL.—Subject to the rec-
7 ommendations of the Council, in accordance
8 with section 120, the Federal banking agencies
9 shall develop capital requirements applicable to
10 insured depository institutions, depository insti-
11 tution holding companies, and nonbank finan-
12 cial companies supervised by the Board of Gov-
13 ernors that address the risks that the activities
14 of such institutions pose, not only to the insti-
15 tution engaging in the activity, but to other
16 public and private stakeholders in the event of
17 adverse performance, disruption, or failure of
18 the institution or the activity.

19 (B) CONTENT.—Such rules shall address,
20 at a minimum, the risks arising from—

21 (i) significant volumes of activity in
22 derivatives, securitized products purchased
23 and sold, financial guarantees purchased
24 and sold, securities borrowing and lending,

1 and repurchase agreements and reverse re-
2 purchase agreements;

3 (ii) concentrations in assets for which
4 the values presented in financial reports
5 are based on models rather than historical
6 cost or prices deriving from deep and liq-
7 uid 2-way markets; and

8 (iii) concentrations in market share
9 for any activity that would substantially
10 disrupt financial markets if the institution
11 is forced to unexpectedly cease the activity.

12 **SEC. 172. EXAMINATION AND ENFORCEMENT ACTIONS FOR**
13 **INSURANCE AND ORDERLY LIQUIDATION**
14 **PURPOSES.**

15 (a) EXAMINATIONS FOR INSURANCE AND RESOLU-
16 TION PURPOSES.—Section 10(b)(3) of the Federal De-
17 posit Insurance Act (12 U.S.C. 1820(b)(3)) is amended—

18 (1) by striking “In addition” and inserting the
19 following:

20 “(A) IN GENERAL.—In addition”; and

21 (2) by striking “whenever the board of directors
22 determines” and all that follows through the period
23 and inserting the following: “or nonbank financial
24 company supervised by the Board of Governors or a
25 bank holding company described in section 165(a) of

1 the Restoring American Financial Stability Act of
2 2010, whenever the Board of Directors determines
3 that a special examination of any such depository in-
4 stitution is necessary to determine the condition of
5 such depository institution for insurance purposes,
6 or of such nonbank financial company supervised by
7 the Board of Governors or bank holding company
8 described in section 165(a) of the Restoring Amer-
9 ican Financial Stability Act of 2010, for the purpose
10 of implementing its authority to provide for orderly
11 liquidation of any such company under title II of
12 that Act, provided that such authority may not be
13 used with respect to such company that is in a gen-
14 erally sound condition.

15 “(B) LIMITATION.—Before conducting a
16 special examination of a nonbank financial com-
17 pany supervised by the Board of Governors or
18 a bank holding company described in section
19 165(a) of the Restoring American Financial
20 Stability Act of 2010, the Corporation shall re-
21 view any available and acceptable resolution
22 plan that the company has submitted in accord-
23 ance with section 165(d) of that Act, consistent
24 with the nonbinding effect of such plan, and
25 available reports of examination, and shall co-

1 ordinate to the maximum extent practicable
2 with the Board of Governors, in order to mini-
3 mize duplicative or conflicting examinations.”.

4 (b) ENFORCEMENT AUTHORITY.—Section 8(t) of the
5 Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is
6 amended—

7 (1) in paragraph (1), by inserting “, any depos-
8 itory institution holding company,” before “or any
9 institution-affiliated party”;

10 (2) in paragraph (2)—

11 (A) by striking “or” at the end of subpara-
12 graph (B);

13 (B) at the end of subparagraph (C), by
14 striking the period and inserting “or”; and

15 (C) by inserting at the end the following
16 new subparagraph:

17 “(D) the conduct or threatened conduct
18 (including any acts or omissions) of the deposi-
19 tory institution holding company poses a risk to
20 the Deposit Insurance Fund, provided that such
21 authority may not be used with respect to a de-
22 pository institution holding company that is in
23 generally sound condition and whose conduct
24 does not pose a foreseeable and material risk of
25 loss to the Deposit Insurance Fund;” and

1 (3) by adding at the end the following:

2 “(6) POWERS AND DUTIES WITH RESPECT TO
3 DEPOSITORY INSTITUTION HOLDING COMPANIES.—

4 For purposes of exercising the backup authority pro-
5 vided in this subsection—

6 “(A) the Corporation shall have the same
7 powers with respect to a depository institution
8 holding company and its affiliates as the appro-
9 priate Federal banking agency has with respect
10 to the holding company and its affiliates; and

11 “(B) the holding company and its affiliates
12 shall have the same duties and obligations with
13 respect to the Corporation as the holding com-
14 pany and its affiliates have with respect to the
15 appropriate Federal banking agency.”.

16 (c) RULE OF CONSTRUCTION.—Nothing in this Act
17 shall be construed to limit or curtail the Corporation’s cur-
18 rent authority to examine or bring enforcement actions
19 with respect to any insured depository institution or insti-
20 tution-affiliated party.

21 **SEC. 173. ACCESS TO UNITED STATES FINANCIAL MARKET**
22 **BY FOREIGN INSTITUTIONS.**

23 (a) ESTABLISHMENT OF FOREIGN BANK OFFICES IN
24 THE UNITED STATES.—Section 7(d)(3) of the Inter-

1 national Banking Act of 1978 (12 U.S.C. 3105(d)(3)) is
2 amended—

3 (1) in subparagraph (C), by striking “and” at
4 the end;

5 (2) in subparagraph (D), by striking the period
6 at the end of and inserting “; and”; and

7 (3) by adding at the end the following new sub-
8 paragraph:

9 “(E) for a foreign bank that presents a
10 risk to the stability of United States financial
11 system, whether the home country of the for-
12 eign bank has adopted, or is making demon-
13 strable progress toward adopting, an appro-
14 priate system of financial regulation for the fi-
15 nancial system of such home country to miti-
16 gate such risk.”.

17 (b) TERMINATION OF FOREIGN BANK OFFICES IN
18 THE UNITED STATES.—Section 7(e)(1) of the Inter-
19 national Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is
20 amended—

21 (1) in subparagraph (A), by striking “or” at
22 the end;

23 (2) in subparagraph (B), by striking the period
24 at the end of and inserting “; or”; and

1 (3) by inserting after subparagraph (B), the
2 following new subparagraph:

3 “(C) for a foreign bank that presents a
4 risk to the stability of the United States finan-
5 cial system, the home country of the foreign
6 bank has not adopted, or made demonstrable
7 progress toward adopting, an appropriate sys-
8 tem of financial regulation to mitigate such
9 risk.”.

10 (c) REGISTRATION OR SUCCESSION TO A UNITED
11 STATES BROKER OR DEALER AND TERMINATION OF
12 SUCH REGISTRATION.—Section 15 of the Securities Ex-
13 change Act of 1934 (15 U.S.C. 78o) is amended by adding
14 at the end the following new subsections:

15 “(k) REGISTRATION OR SUCCESSION TO A UNITED
16 STATES BROKER OR DEALER.—In determining whether
17 to permit a foreign person or an affiliate of a foreign per-
18 son to register as a United States broker or dealer, or
19 succeed to the registration of a United States broker or
20 dealer, the Commission may consider whether, for a for-
21 eign person, or an affiliate of a foreign person that pre-
22 sents a risk to the stability of the United States financial
23 system, the home country of the foreign person has adopt-
24 ed, or made demonstrable progress toward adopting, an

1 appropriate system of financial regulation to mitigate such
2 risk.

3 “(l) TERMINATION OF A UNITED STATES BROKER
4 OR DEALER.—For a foreign person or an affiliate of a
5 foreign person that presents such a risk to the stability
6 of the United States financial system, the Commission
7 may determine to terminate the registration of such for-
8 eign person or an affiliate of such foreign person as a
9 broker or dealer in the United States, if the Commission
10 determines that the home country of the foreign person
11 has not adopted, or made demonstrable progress toward
12 adopting, an appropriate system of financial regulation to
13 mitigate such risk.”.

14 **SEC. 174. STUDIES AND REPORTS ON HOLDING COMPANY**
15 **CAPITAL REQUIREMENTS.**

16 (a) STUDY OF HYBRID CAPITAL INSTRUMENTS.—
17 The Comptroller General of the United States, in con-
18 sultation with the Board of Governors, the Comptroller of
19 the Currency, and the Corporation, shall conduct a study
20 of the use of hybrid capital instruments as a component
21 of Tier 1 capital for banking institutions and bank holding
22 companies. The study shall consider—

23 (1) the current use of hybrid capital instru-
24 ments, such as trust preferred shares, as a compo-
25 nent of Tier 1 capital;

1 (2) the differences between the components of
2 capital permitted for insured depository institutions
3 and those permitted for companies that control in-
4 sured depository institutions;

5 (3) the benefits and risks of allowing such in-
6 struments to be used to comply with Tier 1 capital
7 requirements;

8 (4) the economic impact of prohibiting the use
9 of such capital instruments for Tier 1;

10 (5) a review of the consequences of disquali-
11 fying trust preferred instruments, and whether it
12 could lead to the failure or undercapitalization of ex-
13 isting banking organizations;

14 (6) the international competitive implications
15 prohibiting hybrid capital instruments for Tier 1;

16 (7) the impact on the cost and availability of
17 credit in the United States from such a prohibition;

18 (8) the availability of capital for financial insti-
19 tutions with less than \$10,000,000,000 in total as-
20 sets; and

21 (9) any other relevant factors relating to the
22 safety and soundness of our financial system and po-
23 tential economic impact of such a prohibition.

24 (b) STUDY OF FOREIGN BANK INTERMEDIATE
25 HOLDING COMPANY CAPITAL REQUIREMENTS.—The

1 Comptroller General of the United States, in consultation
2 with the Secretary, the Board of Governors, the Comp-
3 troller of the Currency, and the Corporation, shall conduct
4 a study of capital requirements applicable to United
5 States intermediate holding companies of foreign banks
6 that are bank holding companies or savings and loan hold-
7 ing companies. The study shall consider—

8 (1) current Board of Governors policy regarding
9 the treatment of intermediate holding companies;

10 (2) the principle of national treatment and
11 equality of competitive opportunity for foreign banks
12 operating in the United States;

13 (3) the extent to which foreign banks are sub-
14 ject on a consolidated basis to home country capital
15 standards comparable to United States capital
16 standards;

17 (4) potential effects on United States banking
18 organizations operating abroad of changes to United
19 States policy regarding intermediate holding compa-
20 nies;

21 (5) the impact on the cost and availability of
22 credit in the United States from a change in United
23 States policy regarding intermediate holding compa-
24 nies; and

1 (6) any other relevant factors relating to the
2 safety and soundness of our financial system and po-
3 tential economic impact of such a prohibition.

4 (c) REPORT.—Not later than 18 months after the
5 date of enactment of this Act, the Comptroller General
6 of the United States shall submit reports to the Com-
7 mittee on Banking, Housing, and Urban Affairs of the
8 Senate and the Committee on Financial Services of the
9 House of Representatives summarizing the results of the
10 studies required under subsection (a). The reports shall
11 include specific recommendations for legislative or regu-
12 latory action regarding the treatment of hybrid capital in-
13 struments, including trust preferred shares, and shall ex-
14 plain the basis for such recommendations.

15 **SEC. 175. INTERNATIONAL POLICY COORDINATION.**

16 (a) BY THE PRESIDENT.—The President, or a des-
17 ignee of the President, may coordinate through all avail-
18 able international policy channels, similar policies as those
19 found in United States law relating to limiting the scope,
20 nature, size, scale, concentration, and interconnectedness
21 of financial companies, in order to protect financial sta-
22 bility and the global economy.

23 (b) BY THE COUNCIL.—The Chairperson of the
24 Council, in consultation with the other members of the
25 Council, shall regularly consult with the financial regu-

1 latory entities and other appropriate organizations of for-
2 eign governments or international organizations on mat-
3 ters relating to systemic risk to the international financial
4 system.

5 (c) BY THE BOARD OF GOVERNORS AND THE SEC-
6 RETARY.—The Board of Governors and the Secretary
7 shall consult with their foreign counterparts and through
8 appropriate multilateral organizations to encourage com-
9 prehensive and robust prudential supervision and regula-
10 tion to all highly leveraged and interconnected financial
11 companies.

12 **SEC. 176. RULE OF CONSTRUCTION.**

13 No regulation or standard imposed under this title
14 may be construed in a manner that would lessen the strin-
15 gency of the requirements of any applicable primary finan-
16 cial regulatory agency or any other Federal or State agen-
17 cy that are otherwise applicable. This title, and the rules
18 and regulations or orders prescribed pursuant to this title,
19 do not divest any such agency of any authority derived
20 from any other applicable law.